52D CONGRESS, 1st Session. | SENATE. | Ex. Doc. No. 56.

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IN THE SENATE OF THE UNITED STATES.

# MESSAGE

FROM THE

# PRESIDENT OF THE UNITED STATES,

SUBMITTING

*An agreement with the Cherokee Indians for the cession of certain lands.*

MARCH 10, 1892.—Read, referred to the Committee on Indian Affairs, and ordered to be printed.

*To the Senate and House of Representatives:*

I transmit herewith for the consideration of Congress a communication of the 5th instant from the Secretary of the Interior, submitting the agreement concluded by and between Commissioners for the United States and the Cherokee Nation of Indians of the Indian Territory, for the cession of certain lands and other purposes.

BENJ. HARRISON.

EXECUTIVE MANSION,
*March 9, 1892.*

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DEPARTMENT OF THE INTERIOR,
*Washington, March 5, 1892.*

The PRESIDENT: There are herewith forwarded for your consideration and transmission to Congress the agreement entered into by Commissioners for the United States and the Cherokee Nation for the cession of certain lands therein described, commonly known as the Cherokee Outlet.

A separate report of the United States Commissioners made in connection with the agreement is also forwarded.

Copies of the foregoing and all other papers herein referred to are herewith forwarded for your use.

This agreement has been duly considered by the Commissioner of Indian Affairs, who has made written report thereon, and also by the Assistant Attorney-General assigned to this Department, who has rendered an opinion as to the legality and effect of the contract, the sufficiency of the proposed bill (which has been prepared for Congressional action), and his views on the questions of law relating to the subject.

You will find in these reports of the Commissioner of Indian Affairs and of the Assistant Attorney-General so full and condensed a discussion of the different subjects of law and policy arising upon this agreement, that I think it unnecessary to recur to all the numerous points presented.

These officers disagree entirely as to the title of the Cherokee Nation to the lands in question, the Commissioner holding that that nation has "the title of property in perpetuity," and the Assistant Attorney-General that it had originally only an "easement" and that this has been abandoned. But, in view of the fact that, at the creation of this Commission for the United States, Congress authorized the sum of $1.25 per acre to be paid for the land, although my judgment concurs with that of the Assistant Attorney-General, I think the price to be paid is one to be decided by Congress in view of the present necessities of the country and the fact that the Cherokee Nation, whatever may be its actual right, has refused to take less than the sum here offered. The negotiations have extended over more than two years, and every effort has failed to bring out any other result. In fact, it has been extremely difficult to arrive at any agreement whatever.

There is no reason that intruders in the Cherokee Nation should not be removed upon a fair ascertainment of the individuals. The reasons why this action has not been taken heretofore are numerous, involving many questions and making in the Department a very voluminous record. You will perceive that the Assistant Attorney-General expresses the opinion, in which I decidedly concur, that even under the very particular enumeration in the agreement of classes to be removed, the executive, legislative, and judicial departments of this Government will retain the right to redress any wrong that might be inflicted by the Cherokee court or the demand of the principal chief. But I recommend, as he suggests, that if there is any doubt by Congress on this question this reservation of the authority in this Government ought to be expressed in any act of ratification.

There is, in my judgment, no reason to longer insist upon the settlement of other tribes of Indians in the Cherokee country east of the ninety-sixth degree of longitude under the second clause of article 15 of the treaty of July 15, 1866, and therefore the clause of the agreement abrogating this article, 15, is unobjectionable.

But I wish to draw your attention particularly to that portion of the opinion of the Assistant Attorney-General discussing the third paragraph of the second article of the agreement; that provides:

> The judicial tribunals of the Cherokee Nation shall have exclusive jurisdiction in all civil and criminal cases arising in the Cherokee country, in which members of the Cherokee Nation, by nativity or adoption, shall be the only parties.

This provision is very similar to that contained in article 13 of the treaty of 1866, but by the second paragraph of the third clause of article 12 of that treaty it is provided that "no law shall be enacted by the Cherokee Nation inconsistent with the Constitution of the United States or laws of Congress or existing treaty stipulations with the United States." The omission of these or other words of similar import from the present agreement is a matter that should not be passed unnoticed. In my judgment no agreement should be made with any tribe or people within the bounds of our country that might give rise even to the least question, even among themselves, as to the supreme dominion of the United States Government under the Constitution. I have therefore had added to the first section of the bill the words: "Subject to the Constitution and laws of the United States."

As to the accounting provided for between the Cherokee Nation and the United States, although liable to lead, in my judgment, to very protracted and expensive injury and to result in but little profit, I make no objection.

The fifth consideration set forth in article 2 of the agreement is to the effect that "any citizen" of the Cherokee Nation, who, "prior to the 1st day of November, 1891," was a bona fide resident upon, or had as a farmer made permanent improvements upon, any part of the ceded lands, and has not yet disposed of them, may be allotted the lands so improved as a homestead, to the extent of 80 acres for himself, and a like amount to his wife and each child, to conform to the public surveys and to cover the improvements, as far as made, and to the extent of the allotments. And any citizen of said nation, who, prior to said date, had in the same manner improved a portion of the ceded lands, but not resided thereon, shall be entitled to an allotment of the same to the extent of 80 acres, to be taken in like manner. It is further agreed that the number of said allotments shall not exceed 70, and that the quantity of land so allotted shall not exceed 5,600 acres in quantity. For all lands thus allotted the sum of $1.40 per acre is to be deducted from the amount agreed to be paid to the nation for the ceded lands.

In my judgment, from information in the Department, there was no occasion for the insertion of this article or foundation of claim in this particular by the Cherokee Nation to the extent made and allowed; and notwithstanding the restrictions provided as to claims by allottees and the amount of proof that may be required to produce, I believe that it will result in many attempts at fraudulent imposition by the unscrupulous. Representations that such frauds are already concocted and in course of execution by individuals and have been formulated in petitions have been considered, by your direction, in connection with this business.

I have already expressed my opinion that the amount to be paid may well be left with Congress, but as to the manner of its payment I think too much is left to the Cherokee Nation. My conviction is that the Cherokees are receiving by this agreement a very large consideration compared with their interest in the land ceded, and to allow this whole sum of money to be paid over on demand is to unnecessarily commit to the care of these Indians a much greater responsibility than has been allowed to others in like condition. The provision that if the nation should cause the money or any portion of it to be distributed per capita and exclude therefrom the classes of persons (freedmen and others) provided for in articles 9 and 15 of the treaty of 1866, on complaint of the parties thus discriminated against, Congress may authorize them to bring suit against the United States and the Cherokee Nation, etc., is entirely unsatisfactory to me.

The presumption is indulged, by the very language of the agreement, that such a discrimination may be made, and the past history of the dealings of the nation show that it has been heretofore practiced. There should be no hesitation, it seems to me, in making provision against any such possibility of unjust discrimination, and a sufficient portion of the money should be retained to leave it with the United States to correct the wrong, should it occur, without driving those already injured to the hardship of a lawsuit and that dependent upon future legislation by Congress.

The other suggestions made in the reports presented I concur in.

Inasmuch as this most important business will receive no doubt much discussion by Congress, I recommend that the bill be submitted as already framed.

In conclusion, I draw attention to the fact that the ratification of the agreement is required to take effect on or before March 4, 1893.

Most respectfully,

JOHN W. NOBLE,
*Secretary.*

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DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
*Washington, February 6, 1892.*

SIR: I have the honor to acknowledge the receipt, by your reference for report, of a report of January 9, 1892, from the Cherokee Commission, so called, transmitting a certified copy of an act of the National Council of the Cherokee Nation, approved January 4, 1892, by the principal chief, which recites an agreement entered into between said Commission on the part of the United States and commissioners on the part of the Cherokee Nation, and ratifies the same.

Article 1 of said agreement provides that—

> The Cherokee Nation, by act duly passed, shall cede and relinquish all its title, claim, and interest of every kind and character in and to that part of the Indian Territory bounded on the west by the one-hundredth degree of west longitude; on the north by the State of Kansas; on the east by the ninety-sixth degree of west longitude, and on the south by the Creek Nation, the Territory of Oklahoma, and the Cheyenne and Arapahoe Reservation, created or defined by executive order dated August 10, 1869, the tract of land embraced within the above boundaries containing 8,144,682.91 acres, more or less.

For and in consideration of the above cession and relinquishment, the United States agrees, in article 2, as follows:

> First. That all persons now resident or who may hereafter become residents in the Cherokee Nation, and who are not recognized as citizens of the Cherokee Nation by the constituted authorities thereof, and who are not in the employment of the Cherokee Nation, or in the employment of citizens of the Cherokee Nation in conformity with the laws thereof, or in the employment of the United States Government, and all citizens of the United States who are not resident in the Cherokee Nation under the provisions of treaty or acts of Congress, shall be deemed and held to be intruders and unauthorized persons, within the intent and meaning of section 6 of the treaty of 1835 and sections 26 and 27 of the treaty of July 19, 1866, and shall, together with their personal effects, be removed without delay from the limits of said nation by the United States, as trespassers, upon the demand of the principal chief of the Cherokee Nation. In such removal no houses, barns, outbuildings, fences, orchards, growing crops, or other chattels real, being attached to the soil and belonging to the Cherokee Nation, the owner of the land, shall be removed, damaged, or destroyed, unless it shall become necessary in order to effect the removal of such trespassers: *Provided always*, That nothing in this section shall be so construed as to affect in any manner the rights of any persons in the Cherokee Nation under the ninth article of the treaty of July 19, 1866.
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> Second. That article 15 of the treaty of July 19, 1866, by and between the United States and the Cherokee Nation, shall be abrogated and held for naught from and after the day that Congress may ratify this agreement, providing for such cession and relinquishment of title: *Provided*, That the rights of any person or persons heretofore acquired under and by virtue of said article 15 shall in no manner, and to no extent whatever, be affected by such abrogation.
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> Third. The judicial tribunals of the Cherokee Nation shall have exclusive jurisdiction in all civil and criminal cases arising in the Cherokee country, in which members of the Cherokee Nation by nativity or adoption shall be the only parties.
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> Fourth. The United States shall, without delay, render to the Cherokee Nation, through any agent appointed by authority of the National Council, a complete account of moneys due the Cherokee Nation under any of the treaties ratified in the years 1817, 1819, 1825, 1828, 1833, 1835–'36, 1846, 1866, and 1868, and any laws passed

by the Congress of the United States for the purpose of carrying said treaties, or any of them, into effect; and upon such accounting should the Cherokee Nation, by its National Council, conclude and determine that such accounting is incorrect or unjust, then the Cherokee Nation shall have the right within twelve months to enter suit against the United States, in the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for any alleged or declared amount of money promised but withheld by the United States from the Cherokee Nation, under any of said treaties or laws, which may be claimed to be omitted from, or improperly or unjustly or illegally adjusted in said accounting; and the Congress of the United States shall at its next session, after such case shall be finally decided and certified to Congress according to law, appropriate a sufficient sum of money to pay such judgment to the Cherokee Nation, should judgment be rendered in her favor; or if it shall be found upon such accounting that any sum of money has been so withheld, the amount shall be duly appropriated by Congress, payable to the Cherokee Nation, upon the order of its National Council, such appropriation to be made by Congress, if then in session. and if not, then at the session immediately ollowing such accounting.

Fifth. That any citizen of the Cherokee Nation, who, prior to the 1st day of November, 1891, was a bona fide resident upon and further had, as a farmer and for farming purposes, made permanent and valuable improvements upon any part of the land herein ceded and who has not disposed of the same, but desires to occupy the particular lands so improved as a homestead and for farming purposes, shall have the right to select one-eighth of a section of land, to conform however to the United States surveys; such selection to embrace, as far as the above limitation will admit, such improvements. The wife and children of any such citizen shall have the same right of selection that is above given to the citizen, and they shall have the preference in making selections to take any lands improved by the husband and father that he can not take—until all of his improved land shall be taken.

That any citizen of the Cherokee Nation not a resident within the land herein ceded, who, prior, to the 1st day of November, 1891, had for farming purposes made valuable and permanent improvements upon any of the land herein ceded, shall have the right to select one-eighth of a section of land to conform to the United States surveys; such selection to embrace, as far as the above limitation will admit, such improvements.

It is further agreed and understood that the number of such allotments shall not exceed seventy in number and the land allotted shall not exceed 5,600 acres; that such allotments shall be made and confirmed under such rules and regulations as shall be prescribed by the Secretary of the Interior, and when so made and confirmed shall be conveyed to the allottees, respectively, by the United States, in fee simple.

It is further agreed that from the price to be paid to the Cherokee Nation for the cession herein provided for, there shall be deducted the sum of $1.40 for each acre so taken in allotment.

Sixth. That in addition to the foregoing enumerated considerations for the session and relinquishment of title to the lands hereinbefore provided, the United States shall pay to the Cherokee Nation, at such time and in such manner as the Cherokee National Council shall determine, the sum of $8,595,736.12, in excess of the sum of $728,389.46, the aggregate of amounts heretofore appropriated by Congress and charged against the lands of the Cherokees west of the Arkansas River, and also in excess of the amount heretofore paid by the Osage Indians for their reservation. So long as the money, or any part of it, shall remain in the Treasury of the United States after this agreement shall have become effective, such sum so left in the Treasury of the United States shall bear interest at the rate of 5 per centum per annum, payable semiannually: *Provided*, that the United States may at any time pay to said Cherokee Nation the whole or any part of said sum, and thereupon terminate the obligation of the United States in respect to so much thereof as shall be so paid and in respect to any further interest upon the same: *Provided, further*, That should the Cherokee Nation determine to distribute said money, or any part thereof, principal or interest, to any of its citizens, per capita, and should the classes of persons provided for in the ninth and fifteenth articles of the treaty of July 19, 1866, claim that in such distribution they have been unjustly or illegally discriminated against, then, on complaint made by such persons, Congress shall by law authorize a suit in a proper court, by and between such classes of persons and the United States and the Cherokee Nation, to determine that question—giving to any party thereto the right of appeal to the Supreme Court of the United States, and providing that such suit or suits may, in proper manner, be advanced upon the dockets of such courts to secure a speedy hearing of the same, and the United States shall retain a sufficient sum of such money under its control to adjust and relieve such discrimination should it be adjudged that such discrimination has been made. It is expressly understood that this agreement, ceding and relinquishing the title to the lands herein described, shall not be effective for any purpose whatever until it shall, in its entirety, be ratified by Congress, and the amount of money herein agreed to be paid to the Cherokee Nation for such cession and relinquishment shall have been appropriated by Congress and placed in the Treasury of the United States subject to the order of the Cherokee National Council: *Provided, further,* That nothing contained in this agreement shall have the effect to limit or impair any rights whatever the Cherokee Nation has in or to or over the lands herein ceded until it shall be so ratified by Congress; and

*Provided further,* That if this agreement shall not be ratified by Congress, and the appropriation of money, as herein provided for, made, on or before March 4, 1893, it shall be utterly void.

I have given careful consideration to the agreement and have the honor to say as to the first section of article 2 thereof, which is the first consideration named for the cession and relinquishment provided for in article 1, that said section would appear to impose on the United States no material obligation that is not now imposed upon it by article 6 of the treaty of 1835 (7 Stats., 478) and articles 26 and 27 of the treaty of 1866 (14 Stats., 799).

That part of article 6 of the treaty of 1835 which is referred to in this agreement provides:

> That they [meaning the Cherokees] shall also be protected against interruption and intrusion from citizens of the United States who may attempt to settle in the country without their consent, and all such persons shall be removed from the same by order of the President of the United States. But this is not intended to prevent any residence among them of useful farmers, mechanics, and teachers for the instruction of the Indians according to treaty stipulations.

That part of article 26 of the treaty of 1866 to which this agreement relates provides that—

> They shall also be protected against interruptions or intrusions from all unauthorized citizens of the United States who may attempt to settle on their lands or reside in their territory.

Article 27 provides—

> * * * and all persons not in the military service of the United States, not citizens of the Cherokee Nation, are to be prohibited from coming into the Cherokee Nation, or remaining in the same, except as herein otherwise provided; and it is the duty of the United States Indian agent for the Cherokees to have such persons not lawfully residing or sojourning therein removed from the nation, as they now are or hereafter may be required by the intercourse laws of the United States.

The provisions of this agreement on this subject appear to furnish a definition of the terms used in the articles of treaties cited, and provide for the execution of promises made therein. It is agreed that "all persons now resident, or who may hereafter become residents, in the Cherokee Nation, and who are not recognized as citizens of the Cherokee Nation by the constituted authorities thereof," etc., shall be deemed and held to be intruders and unauthorized persons within the meaning of the treaties referred to, and "shall, together with their personal effects, be removed without delay from the limits of said nation by the United States, as trespassers, upon the demand of the principal chief of the Cherokee Nation."

By article 5 of the Cherokee treaty of December 29, 1835, above referred to, that nation was secured in the right, by its national council, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them, with the proviso that these laws shall not be inconsistent with the Constitution of the United States and acts of Congress passed or that might be passed regulating trade and intercourse with the Indians.

This provision operated as a guarantee of the right of self government. One of the highest prerogatives of a government is the right to declare who are its citizens, and the Supreme Court in the case of the Eastern band of Cherokees, etc. (117 U. S. Reports, 288), declared in effect that this right of self government which has been secured to the Cherokee Nation gave that nation the right to determine who are entitled to citizenship therein.

Since the conclusion of the treaty of 1835 it has been the clear obligation of the Government of the United States to protect the Cherokees against "interruptions or intrusions from all unauthorized citizens of the United States who may attempt to settle on their lands or reside in their territory." This obligation was renewed in the treaty of 1866, and is binding to-day.

In the treaties with the Choctaws and Chickasaws the United States entered into similar obligations with reference to the protection of those nations against intruders within their territory, and pursuant to these obligations steps were recently taken for the removal of trespassers within the Chickasaw country; a detail of troops for that purpose was made, and the Indian agent for the Union Indian Agency was employed for some time last summer in a thorough search of portions of that country with troops and in removing intruders therefrom. A history of the transactions with reference to this matter will be found on page 80 *et seq.* for my annual report for 1891.

I do not see that any new obligation in respect to removal of intruders is entered into with the Cherokees in the agreement, and it seems to me only a reiteration of obligations already in force. It may be that some collateral questions will arise under this provision of the agreement for future determination, as will appear from that part of my report of February 17, 1890, on the question of claimants to citizenship in the five civilized tribes which relates to the question of Cherokee citizenship, an excerpt copy of which report is herewith inclosed for convenient reference.

A proviso in this section of the agreement fully protects the rights of the Cherokee freedmen under article 9 of the treaty of 1866, so no objection thereto on that account exists.

The second section of article 2 of the agreement provides for the abrogation of the fifteenth article of the treaty of 1866. That article is as follows:

> The United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee Nation, on equal terms in every respect with native citizens. And should any such tribe, thus settling in said country, decide to preserve their tribal organizations and to maintain their tribal laws, customs, and usages, not inconsistent with the the constitution and laws of the Cherokee Nation, they shall have a district of country set off for their use by metes and bounds equal to 160 acres, if they should so decide, for each man, woman, and child of said tribe, and shall pay for the same into the national fund such price as may be agreed on by them and the Cherokee Nation, subject to the approval of the President of the United States, and in cases of disagreement the price to be fixed by the President.
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> And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed on by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the lands herein ceded or authorized to be ceded or sold than their members bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees. But no Indians who have no tribal organizations,

> or who shall determine to abandon their tribal organizations, shall be permitted to settle east of the ninety-sixth degree of longitude without the consent of the Cherokee national council, or of a delegation duly appointed by it, being first obtained. And no Indians who have and determine to preserve their tribal organizations shall be permitted to settle, as herein provided, east of the ninety-sixth degree of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the ninety-sixth degree of longitude.

Under the provisions of this article certain Delawares and Shawnees have been settled in the Cherokee country and made a part of the Cherokee Nation, but the rights of these Delawares and Shawnees are saved by a proviso to the agreement, and the abrogation of this article would have no effect whatever upon their rights thereunder.

The lands now embraced in the Cherokee Nation amount to 5,031,351 acres, which, if allotted to all persons entitled to receive allotments thereon, would give about 170 acres to each. This quantity would probably not be considered excessive in view of the fact that in some instances a larger quantity of land has been allotted under special laws of Congress, and, too, it is not likely that the United States would desire to settle any other civilized Indians in the Cherokee country. There would, therefore, seem to be no reasonable objection to the abrogation of the fifteenth article of the treaty inasmuch as it appears to have served the object for which it was incorporated into the treaty.

The third consideration is in effect only a renewal of the guarantee of the right of self-government to the Cherokee Nation. It might have the effect to divest certain jurisdiction now exercised by the United States court for the Indian Territory, which court has taken jurisdiction of controversies wherein the persons contesting were not Indians by blood. This would give the Cherokee courts exclusive jurisdiction in all cases where persons of white blood who are members of the Cherokee Nation under its laws are interested, but beyond this it does not change the existing rights of the Cherokees. There appears to be no objection to this, and inasmuch as these white persons reap the benefits of citizenship in the Cherokee Nation they should be amenable in all respects to the jurisdiction of the courts of that nation.

The fourth section of article 2 provides for an accounting between the United States and the Cherokee Nation. The work necessary to render this account will be very heavy, and much time will be necessary to properly prepare the same. On this provision of the agreement the commissioners say:

> The Government has made the accounting, has kept the books, has construed the treaties. If that has been done properly no harm can come from restating the account. If it has not been done properly, no possible reason can exist why the error should not be corrected. It creates no new obligations against the Government, but only provides for the legal discharge of the old ones.

This seems to me to be a reasonable view to take of this provision, and I do not see that any valid objection could be advanced against it.

In your reference of the matter to this office you said:

> Particular attention is called to section 4 of article 2 of the agreement, with request for a full report as to what may be the state of the account between the United States and the Cherokees, if practicable, within a reasonable time, if not your general conclusions.

In reply to this indorsement I have the honor to say that if this section is construed to require the United States to state an account of moneys stipulated to be paid to the Cherokee Nation, under the treaties therein specified and under the various appropriation acts passed to carry the same into effect, this account could be prepared by this office within a reasonable time, say about two months. If, on the other hand, it be construed to require a detailed statement of all the moneys received and disbursements made by the United States of the Cherokee funds under said treaties and acts of Congress, which seems to me to be the intention of the parties negotiating the agreement, it would require the services of an expert accountant with assistants probably twelve months or more to review and copy the Cherokee accounts and records running back nearly a century. In order to prepare a statement of this kind it would require an appropriation by Congress of the sum of at least $5,000 to pay for the services of an expert accountant and assistants, and in the draft of a bill for the ratification of the agreement, herewith inclosed, I have provided for the appropriation of that sum or so much thereof as may be necessary for that purpose.

The consideration provided for in section 5 of the article of the agreement under discussion is that certain Cherokees, not exceeding seventy in number, shall be permitted to select 80 acres each, within the ceded territory, which shall be confirmed and patented to them in fee; and I do not think it presents any objectionable feature, as the selections agreed to will be paid for by deducting from the money consideration agreed upon at the rate of $1.40 per acre. Only 5,600 acres can be thus appropriated, which would be hardly noticeable in so large a tract of country.

The money consideration provided for in section 6 of the second article of this agreement is $8,595,736.12 in excess of the $728,389.46, the aggregate heretofore appropriated by Congress and charged against the lands of the Outlet west of the Arkansas River, and also in excess of $1,099,137.41 paid by the Osages for the reservation occupied by them. This would make the total consideration for the relinquishment by the Cherokee Nation of all its claim to rights in the lands west of the ninety-sixth degree of longitude, $10,423,262.99. In their report the Commission applies the price paid in three ways. First it says that if the money agreed to be paid is applied to the 6,022,754.11 acres alone, being the quantity of the land west of the Arkansas River not occupied or set apart for any Indians, the price per acre is $1.42$\frac{7}{10}$. If it is applied to all the lands west of the Arkansas River, including the reservations now occupied by the Indians thereon, the price per acre is a little less than $1.31; but if the price agreed to be paid is applied to all the lands embraced within the ceded territory, 8,144,682.91 acres, then the price per acre is $1.05.

If the Cherokees have in the outlet only an easement, the right of passage over, which, as has been suggested by Judge Green of the Logan district court for the Territory of Oklahoma in the case of Jordon *et al. vs.* Henry J. Goldman, they have already forfeited, the price agreed upon would then appear to be a very excessive one. If on the other hand they have the title of property in perpetuity in those lands, the price agreed upon is not, I think, too great for the relinquishment of their rights. I think they have a right of perpetual property in the Outlet land as I had the honor to state to you in my report on the subject of January 26, 1892, in which the title of the Cherokees in the Outlet was fully discussed.

The provision of the act of March 2, 1889 (25 Stats., 1005), by which these negotiations were authorized, and under which they have been conducted, provides—

> That said Commission is further authorized to submit to the Cherokee Nation the proposition that said nation shall cede to the United States in the manner and with

the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians of date January 19, 1889, and ratified by the present Congress; and if said Cherokee Nation shall accept, and by act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain for the purpose of such disposition as is herein provided; and the President is authorized, as soon thereafter as he may deem advisable, by proclamation, to open said lands to settlement in the same manner and to the same effect as in this act provided concerning the lands acquired from said Creek Indians, etc.

In the instructions to the Commission this office construed this authority as directing the offer of $1.25 per acre for the lands in the Cherokee Outlet west of the Arkansas River, from which offer the sums already appropriated by Congress, and chargeable against such lands, were to be deducted, viz, $728,349.46.

It is already seen that the compensation agreed to be paid if calculated on the basis of the quantity of land west of the Arkansas River would be $1.42 per acre. For this reason, and for the further reason that other considerations are agreed to which require the action of Congress to ratify and confirm, the agreement must be submitted for action of Congress before the President can open the land to settlement as provided in the statutes.

It will be observed from the draft of the bill inclosed herewith that I have inserted a provision reserving from entry about 8,640 acres of land for the use of the Chilocco Indian school, being the same land which was reserved by the Executive Order of July 12, 1884.

In view of the fact that the Government has been at much pains and expense to establish an industrial school at this point, I think it very important that the act ratifying this agreement shall reserve the lands for the purpose to which they have heretofore been adapted.

I have made no provision, as will be seen in the draft of bill inclosed, for the disposition of the ceded lands further than to authorize the President to open them for settlement in accordance with the provisions of the Indian appropriation act of March 2, 1889 (25 Stat., 1005).

I have, however, made provision in the bill for an appropriation of $3,000 to effect the removal of intruders within the territory of the Cherokee Nation, as provided in article 2 of the agreement. It seems to me necessary that some such provision be made as the removal will undoubtedly necessitate extra costs to meet which there is no general appropriation under the control of this office that could be used for the purpose.

I inclose, herewith, the original papers in the matter, two copies of the report of the Commission, and of the act of the Cherokee Council ratifying the agreement between our commissioners and the commissioners on the part of the Cherokees, and two copies of the draft of a bill to ratify the said agreement; also two excerpt copies of my report of February 17, 1890, heretofore referred to.

Very respectfully, your obedient servant,

T. J. MORGAN,
*Commissioner.*

The SECRETARY OF THE INTERIOR.

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TAHLEQUAH, IND. T., *January 9, 1892.*

SIR: The commissioners appointed to negotiate with all Indians who own or claim lands in this Territory west of the ninety-sixth degree of longitude, for the cession thereof to the United States, now have the honor to report, that they have concluded an agreement with the Cherokee Nation, by the terms of which that nation cedes and relinquishes title to all the lands claimed by it in the Indian Territory between the ninety-sixth and one hundredth degrees of longitude. This agreement, embodied in the act of the Cherokee national council ratifying and confirming it, is herewith inclosed. The lands embraced within the description includes the Osage and Kansas reservations, the Tonkawa, Ponca, Pawnee, and Otoe reservations, and the Cherokee Outlet, and contains 8,144,632.91 acres.

This agreement, perhaps, explains itself, but it may be opportune to point out some of the conditions surrounding and attaching to the subject-matter thereof. This Commission, from first to last, has spent fully twenty-three weeks in Tahlequah in bringing about the agreement just concluded. Many other weeks, in Washington, en route, and in preparation, have been entirely devoted to this particular work.

The reservations above mentioned have been included in the agreement because the Cherokees have claimed a contingent interest therein, based on two facts. First: That they conveyed them to the United States in trust for the tribes of Indians named in the deeds of conveyance; and that if devoted to other uses, for public settlement for instance, an equity arises in their favor for increased compensation. This view is sustained, to some extent, by the action of the Government in the Creek and Seminole purchases in 1889, and by an appraisement made by the Government of the lands west of the Arkansas River under the sixteenth article of the treaty of 1866 with the Cherokees. That appraisement was made in pursuance of an act of Congress, and the commissioners who made the appraisement, in their report, stated that because the lands were to be used for Indian settlement only they had appraised them at one-half their real value. Second: They maintain that the appraisement made by the President, in accordance with the act of Congress referred to, was unauthorized, without their consent and approval, and not in accordance with said article 16 of the treaty of 1866. It is true that the Cherokee Nation executed the conveyances referred to above, but the trust for the Indians named is created by law and the deeds of conveyance themselves. The title was divested, but the claim for increased compensation remained alive and active. At all events the claim was made, and rather than be obstructed by the claim, as each of said reservations should be purchased by the Government from the Indians occupying them, for public settlement, the Commission determined to settle it in advance, and for all time, in the agreement now made.

As to the conditions of the agreement, besides the relinquishment of title upon the one part, and the payment of a price in money on the other, it is necessary to state that the settlement of the matters contained in such conditions were made a condition precedent to any agreement for the sale of the land. Perfect security in the use and possession of the Home Tract was a *sine qua non*. If that could not be secured now, when the Government was asking them to relinquish something, they argued they could not, with even slight prospect of success, hope to secure it in the future when they would have nothing to offer for it. In order that the Commission might know the scope of their demands and the quality and magnitude of their grievances, a full exposition of them was invited. This was made. The field that the Commission was invited into is mapped out in the papers hereto attached and marked Exhibit A.

The first and greatest of their grievances was what they were pleased to style "the blighting curse of intrusion" upon their domain by unauthorized persons.

It is represented by those in authority here, that no fewer than 7,000 persons (occupying and cultivating no fewer than 2,000 farms and houses) are now resident upon this Home Tract, who are not citizens of the Cherokee Nation at all. These persons are represented as being organized for mutual aid and protection, have officers regularly elected, and collect membership fees and dues to employ counsel for and otherwise assist each other in appropriating and holding the choicest parcels of land in the nation.

Courts have, at great expense to the Cherokees, been established and kept in session for months and years to determine questions of citizenship, and the applications of all these persons have been rejected and their citizenship denied. Many others have memorialized the national council, and there also citizenship has been denied them. Pending these applications they have occupied and improved lands and hold them, to the exclusion of recognized Cherokee citizens. There can be no doubt that such persons are here without right and only as naked trespassers. They can not legally acquire a right in the soil, nor its products, nor in any improvement that they may make thereon. The Cherokee Nation is without redress in the premises. The United States is under solemn treaty obligations, by the sixth article of the treaty of 1835 and the twenty-sixth and twenty-seventh articles of the treaty of 1866, to remove them. No court now organized has jurisdiction in the premises. None can be organized by the Cherokee Nation. The power resides either in the legislative or executive branch of the United States Government, or both. There can be no doubt, either, that the Cherokee Nation must determine its own citizenship by blood or adoption by favor. Therefore, we have inserted in the agreement that such persons, with their personal effects, shall, without delay, be removed by the United States upon the demand of the principal chief of the nation. It is not taking away any right from the intruders, for there is and can be no right in such persons. The United States is not assuming a new duty, but is only promising anew to perform a very old one.

Again, although not so persistently, they desired the abrogation of the fifteenth article of the treaty of 1866. This the Commission readily assented to, because that article is of no appreciable value to the United States. There are no civilized and friendly Indians to settle east of 96°, and if there were there is no room for them there. The meaning of the article it appears is not fully understood. Two tribes, viz, the Delawares and Shawnees, were and are settled here under that article, and yet differences have arisen so complicated and so embarrassing that Congress has felt impelled to authorize suits in the Court of Claims to determine their status. These suits, we are informed, are now pending.

The thirteenth article of the treaty of 1866 would seem to give to the Cherokee courts jurisdiction in cases wherein citizens of the nation, either by nativity or adoption, are the only parties, but because the word "retain" is used instead of the word "have" this jurisdiction has been denied. But it is immaterial, as the law creating the Territory of Oklahoma contains the same language that is used in the agreement that the commissions have made.

The accounting provided for in the fourth subdivision of article 2 of the agreement is inserted and agreed to, because the Cherokees are compelled to accept the construction of the treaties made by the executive and administrative branches of the Government.

Whatever that construction is the Indian must abide by. There is no appeal, except to Congress. Without going specifically into details the Cherokees claim that upon a just accounting, upon a proper construction of the treaties named, a large sum of money, principal and interest, will be found due them. They also desired to include lands as well as money, but they were induced to eliminate "lands" from the provision. With that eliminated the provision was agreed to, as set out. The Government has made the accounting, has kept the books, has construed the treaties. If that has been done properly, no harm can come from restating the account. If it has not been done properly, no possible reason can exist why the error should not be corrected. It creates no new obligation against the Government, but only provides for the legal discharge of old ones.

The fifth subdivision of article 2 is agreed to, in order to prevent any injustice to the persons therein described. There are thought to be about seventy Cherokees residing on, or who have made improvements on, the lands ceded to the United States in the agreement. They are mainly, in number and location, in a little corner of the country, west of the Arkansas River and east of the Pawnee Reservation. These improvements have been in progress for years, and one-eighth of a section of land will not, in every case, embrace all the improvements made by one person. So, for those that reside there with their families—following the general allotment law—the Commission has agreed that each member of the family may take one-eighth of a section; but where the person who owns the improvement does not reside there, he is limited to one-eighth of a section for himself alone. The holding in trust for twenty-five years, provided for in the general allotment law, is purposely omitted because, in these cases, the reasons for such holding do not exist.

These persons are active business farmers and can pay taxes as well as their white neighbors can. Therefore, it is provided that the land shall be conveyed to them, at once, in fee simple, discharged of any obligation on the part of the United States.

The concluding provision is the price to be paid in money, and the conditions upon which it shall be paid.

In the original letter of instructions to this Commission, prepared by the late Commissioner of Indian Affairs, and approved by the present Secretary of the Interior, Hon. John W. Noble, the Commission is directed to offer to the Cherokees $1.25 per acre for all the lands in what is called the Cherokee Outlet, west of the Arkansas River, containing 6,574,486.55 acres, or $8,218,108.19; deducting therefrom the sum of $728,389.46 chargeable against said lands by direction of certain acts of Congress, leaving the net amount to be paid by the Cherokee Nation $7,489,718.73.

The amount of money the Commission has agreed to pay is $8,595,736.12 in excess of the sum of $728,389.46, or $1,106,017.39 more than advised in said original letter of instructions.

This excess can be justified by computing the amount to be paid on any one of several grounds, but it was acceded to by the Commission because it could do no better.

Had the orignal amount authorized to be paid been accepted at once and placed at 5 per cent per annum the United States would have paid by this time interest almost equal to the excess agreed to. The Commission does not mean to suggest, however, that there is any reasonable theory upon which interest could be computed while the Cherokees retained the title, but makes the suggestion merely that by this agreement the Government does not in fact expend but little more money than it would have done had the agreement been made at the orignal price immediately after the passage of the law authorizing the purchase.

Again, the Commission does not readily see any distinction that can be fairly made between the Osage Reservation and the small reservations west of the Arkansas River. The Cherokees conveyed all of them under the same act of Congress, by the same authority, upon the same day, and with the same conditions.

The Osage Reservation contains 1,570,196 acres, and the Cherokees were paid for it 70 cents per acre, or, in the aggregate, $1,099,137.41. At $1.25 per acre, which the Cherokees earnestly maintain they could and should have received, the amount would exceed the amount paid to them by the sum of $863,607.80, which, paid at the time, at the very lowest possible interest would now greatly exceed the amount we have agreed to pay in excess of the original authorized price.

Again, the act of Congress making an appropriation to be charged against the invested funds of the Osages, appropriated $1,650,000, or so much thereof as might be necessary, to pay the Cherokee Nation for the Osage Reservation. But, by some authority, the amount actually paid to the Cherokees was $1,099,137.41, or $550,862.59 less than was appropriated. The last-named sum, at the usual rate of interest paid on Indian invested funds by the Government, would now amount to much more than the excess contained in the agreement the Commission has made.

So, taking into consideration all these incidents of the money and land transactions between the United States and the Cherokee Nation, the United States commissioners agreed to the sum named in the agreement.

If the amount agreed to be paid is applied to the 6,022,754.11 acres alone, then the price per acre is $1.427.

If the amount, however, is applied to all the lands west of the Arkansas River, 6,574,486.55 acres, then the price per acre is a fraction less than $1.31.

Again, if the price agreed to be paid is applied to all the land embraced within the boundaries of the land ceded, 8,144,682.91 acres, then the price per acre is $1.05.

In view of all these various applications of price to acreage the commissioners agreed to the price named, and themselves apply it in this manner, viz:

For the Osage and Kansas, Tonkawa, Pawnee, Otoe and Missouria, and Ponca Reservations, embracing 2,121,928.80 acres, $1.25 per acre, or $2,627,411, less the sum of $1,827,526.87, heretofore paid to the Cherokees on account of said reservations and lands west of the Arkansas River, or a net sum of $799,884.13.

For the remaining 6,022,754.11 acres the remainder of the sum to be paid or $7,795,851.99, or $1.2944 per acre, which is less than 4.5 cents per acre more than the authorized proposition.

In view of all the circumstances of the case, the Commission has concluded that the price in money to be paid is so nearly in line with all similar transactions with Indian nations, that no very substantial objection can be urged against its speedy ratification by Congress.

This report ought not to close without a few observations in regard to the position occupied by the Cherokees in relation to the value of their claim, interest, or title in the lands in question.

The facts or events that would influence a white man to the belief that his property was imperiled only seems, with this people, to magnify its value. The orders removing the cattle herds from the Outlet, and the deprivation of its use, in place of alarming them, only inspires a hope and sure expectation that it will all be made right.

The decision of a court of inferior jurisdiction impugning their title only seems to make them more emphatic in the expression of a desire to take the question of title into the Supreme Court of the United States, and abide by the decision of that tribunal.

The threatened and oft-repeated invasion of the Outlet by "boomers" is only evidence to them that the citizens of the United States place even a higher valuation upon it than they do themselves. And they know that as many times as raids are made, just that many times the United States will expel the raiders.

As to placing the money to their credit, and subject to their order, the Commission can only say that if the Cherokees shall ever become competent to deal with their own funds, they are competent now. There can be no question but that out of the fund they will, of their own accord, make suitable and generous provisions for their government and schools. If there is any universal purpose among them it is to maintain a high standard for their schools. The residue, subject to the limitations expressed in the agreement, will doubtless be distributed per capita among the people. Some, yes, many, will doubtless waste and squander their inheritance, but the great majority, it is believed, will make good and proper use of it, in the improvement of their homes, and otherwise really bettering their condition.

On the whole the Commission is now of the belief, after it is all done, that the agreement is a proper one, and we are content with it.

We have the honor to be, very respectfully.

DAVID H. JEROME,
ALFRED M. WILSON,
WARREN G. SAYRE,
*Commissioners.*

The PRESIDENT.

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## EXHIBIT A.

TAHLEQUAH, CHEROKEE NATION, IND. T., *November 27, 1891.*

Hons. DAVID H. JEROME, WARREN G. SAYRE, ALFRED M. WILSON,
*Commissioners of the United States:*

The Commission on the part of the Cherokee Nation, created by authority of an act of the national council, approved November 16, 1891, respectfully submit the following answer to your communications of the 19th and 23d instants, in which you propose that the Cherokee Nation shall cede and relinquish its claim, title, and interest to lands described and bounded as stated in your said communication of the 23d instant.

The Cherokee Nation, by act duly passed, in accordance with the provisions of an act of the national council, approved November 16, 1891, creating a commission to negotiate on the part of the Cherokee Nation with a commission on the part of the United States appointed by the President, and commonly known as "the Cherokee Commission," shall cede and relinquish to the United States all of its claim, title, and interest, of every kind and character, in and to that part of the Indian Territory bounded on the west by the one-hundredth degree of west longitude, on the north by the State of Kansas and the Arkansas River, on the east by the Arkansas River, and on the south by the Territory of Oklahoma and the Cheyenne and Arapahoe Reservation, created or defined by executive order, dated August 10, 1869, excepting therefrom, however, the tracts of lands embraced within the above boundaries, heretofore, to-wit, on the 14th day of June, 1883, conveyed by the Cheroke Nation to the United States in trust for the benefit of the Pawnee Indians, the Otoe, and Missouria tribe of Indians, the Ponca Indians and the Nez Percés Indians respectively.

The tract to be ceded and relinquished contains 6,022,754,11 acres more or less.

For and in consideration of the above cession and relinquishment the United States agree:

### I.

That all persons, resident in the Cherokee Nation, not recognized as citizens of the Cherokee Nation by the constituted authorities thereof, and who are not in the employ of the Cherokee Nation, or in the employ of citizens of the Cherokee Nation in conformity with the laws thereof, or in the employ of the United

States Government, and all citizens of the United States who are not residents in the Cherokee Nation under provisons of treaty or acts of Congress, shall be deemed and held to be intruders and unauthorized persons, within the intent and meaning of sections 6 of the treaty of 1835 and sections 26 and 27 of the treaty of July 19, 1866, and shall, together with their personal effects, be removed from the limits of said nation by the United States as trespassers, upon the demand of the principal chief of the Cherokee Nation.

### II.

In such removal no houses, barns, outbuildings, fences, orchards, growing crops, or any chattels real, the same being attached to the soil and belonging to the owners of the land, shall be removed, damaged, or destroyed, unless it shall become necessary in order to effect the removal of such trespassers.

That the fifteenth article of the treaty of July 19, 1866, by and between the United States and the Cherokee Nation, shall be abrogated and held for naught from and after the day that Congress may ratify the contract providing for such cession and relinquishment of title: *Provided*, That the rights of any person, or persons, heretofore acquired under and by virtue of said article 15, shall in no manner, and to no extent whatever, be affected by such abrogation.

### III.

The judicial tribunal of the Cherokee Nation shall have exclusive jurisdiction in all civil and criminal cases arising in the Cherokee country, in which members of the Cherokee Nation, by nativity or adoption, shall be the only parties, and the judicial tribunals of the Cherokee Nation shall also have exclusive jurisdiction in all cases between any persons whomsoever, where the right to use, occupy, or in any manner derive a benefit from the lands of the Cherokee Nation shall be a matter at issue.

### IV.

That the United States shall, without delay, render to the Cherokee Nation through any agent appointed by the authority of the national council a complete account of lands and moneys due the Cherokee Nation under any of the treaties of 1817-19-28-33-35-36-46-66 and 68, or any laws passed by the Congress of the United States, for the purpose of carrying the said treaties, or any of them into effect, and upon such accounting, should the Cherokee Nation conclude and determine that such accounting is incorrect or unjust, then the Cherokee Nation shall have the right within (12) twelve months to enter suit against the United States, in the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for any alleged or declared amount of money or land withheld or promised by the United States to the Cherokee Nation under any of said treaties or laws which may be claimed to be omitted from or improperly or unjustly or illegally adjusted in said accounting.

And the Congress of the United States shall, at its next session after such case shall be finally decided and certified to Congress according to law, appropriate a sufficient sum of money to pay such judgment to the Cherokee Nation should judgment be rendered in her favor. And the Cherokee Nation shall also have the right within (12) twelve months from the final ratification of this agreement to institute suit against the United States in the Court of Claims at Washington City, with the right to appeal by either party to the Supreme Court of the United States, for any lands or moneys that may be in law or equity due the Cherokee Nation from the United States on any account whatever, when the amount at issue or the value of the land or thing claimed shall exceed five thousand dollars; and the said court shall be given ample and full jurisdiction in all such cases; and all suits that may be brought under the provisions of this section shall be advanced upon the dockets of both the Court of Claims and the Supreme Court of the United States whenever they shall come before said courts.

### V.

That the United States shall pay to the Cherokee Nation a sum of money the interest of which at five per cent shall equal the amount annually due the Cherokee Nation from railroads occupying as rights of way under acts of Congress any of the lands herein ceded or relinquished: less the amount to be paid the Cherokee Nation by the United States for the land so occupied, at the rate per acre herein provided.

## VI.

That the United States shall pay to the Cherokee Nation the sum of four hundred thousand ($400,000) dollars the amount due the Cherokee Nation from the Cherokee Strip Live Stock Association for the privilege of grazing upon the lands herein ceded and relinquished, but which the said association have failed to pay in consequence of the order of the President of the United States declaring the grant of such privilege to said association by the Cherokee Nation illegal, and commanding the removal of the live stock of said association from said lands.

## VII.

That all Cherokee citizens who may now have valuable improvements upon the lands herein ceded and relinquished shall be paid by the United States the actual value of such improvements.

## VIII.

That in addition to the foregoing considerations for the cession and relinquishment of land herein made the United States shall pay to the Cherokee Nation, at such time and in such manner as the natonal council shall determine, the sum of three (3) dollars per acre for all lands herein ceded and relinquished; but so long as the money or any part of it due for the lands herein ceded and relinquished shall remain in the hands of the United States after this contract shall be ratified by Congress and approved by the President such sum so remaining in the hands of the United States shall draw interest at the rate of five per centum per annum, payable semiannually.

It is expressly agreed that no contract ceding or relinquishing the lands herein described shall be effective for any purpose whatever until the considerations herein enumerated shall have been carried out and Congress shall have actually made the appropriation to pay all money due and the same shall be in the Treasury of the United States subject to the order of the Cherokee national council.

It is also agreed that if these propositions are not accepted by the ensuing session of Congress and approved by the President this agreement shall have no binding effect upon the Cherokee Nation whatever.

The Commission on the part of the Cherokee Nation reserve the right to to amend, qualify, or extend any of the foregoing considerations if the same should should be deemed advisable by them during the progress of these negotiations.

Respectfully,

E. C. BOUDINOT, *Chairman*,
I. A. SCALES,
JOSEPH SMALLWOOD,
ROACH YOUNG,
GEORGE DOWNING,
WM. TRIPLETT,
THOMAS SMITH,
*Commissioners on the part of the Cherokee Nation.*

Attest:
W. P. BOUDINOT,
*Secretary Commission for Cherokee Nation.*

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AN ACT to ratify and confirm certain articles of agreement by and between the United States and the Cherokee Nation of Indians, in the Indian Territory.

Whereas it is provided by section fourteen of the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1889, and for other purposes," approved March 2nd, 1889, that

SEC. 14. The President is hereby authorized to appoint three commissioners, not more than two of whom shall be members of the same political party, to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiations shall be reported to the President and by him to Congress at its next session, and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same, for ratification, and for this purpose the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, to be immediately available: *Provided*, That said commission is further authorized to submit to the Cherokee Nation the proposition that said nation shall cede to the United States, in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians of date January nineteenth, eighteen hundred and eighty-nine, and ratified by the present Congress; and if said Cherokee Nation shall accept and, by act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain for the purpose of such disposition as is herein provided; and the President is authorized, as soon thereafter as he may deem advisable, by proclamation, to open said lands to settlement in the same manner and to the same effect as in this act provided concerning the lands acquired from said Creek Indians; but until said lands are opened for settlement by proclamation of the President no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto; and

Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre have been duly appointed, qualified, and commissioned as such commissioners; and

Whereas by an act of the Cherokee national council, approved November 16th, 1891, among other things, it is provided

"That the principal chief is hereby authorized, by and with the advice and consent of the Senate, to appoint a commission of seven persons with authority to meet and enter into negotiations with the above-named commission, appointed by the President of the United States, for the cession of the lands of the Cherokee Nation west of the 96th degree of west longitude, and for the final adjustment of all questions of interest between the United States and the Cherokee Nation which are now unsettled; and it shall be the duty of said commission on the part of the Cherokee Nation to report their proceedings in full to the national council for their approval and ratification, and that of the Cherokee people, in such manner as the national council may decide to be necessary, before the same shall be obligatory and binding on the Cherokee Nation;" and

Whereas Elias C. Boudinot, Joseph A. Scales, Roach Young, William Triplett, Thomas Smith, Joseph Smallwood, and George Downing have been duly appointed and qualified as such commissioners; and

Whereas said commissioners, so representing the United States, upon the one part, and the Cherokee Nation upon the other part, have made, concluded, and signed certain articles of agreement in the words and figures following, to wit:

Articles of agreement made and concluded at Tallequah, in the Indian Territory, on the 19th day of December, A. D. 1891, by and between David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on the part of the United States, and Elias C. Boudinot, Joseph A. Scales, George Downing, Roach Young, Thomas Smith, William Triplett, and Joseph Smallwood, commissioners on the part of the Cherokee Nation.

### ARTICLE I.

The Cherokee Nation, by act duly passed, shall cede and relinquish all its title, claim, and interest of every kind and character in and to that part of the Indian Territory bounded on the west by the one-hundredth (100°) degree of west longitude, on the north by the State of Kansas, on the east by the ninety-sixth (96°) degree of west longitude, and on the south by the Creek Nation, the Territory of Oklahoma, and the Cheyenne and Arapahoe Reservation created or defined by Executive order dated August 10, 1869, the tract of land embraced within the above boundaries containing eight million one hundred and forty-four thousand six hundred and eighty-two and ninety-one one-hundredths (8,144,682.91) acres, more or less.

### ARTICLE II.

For and in consideration of the above cession and relinquishment the United States agrees:

First. That all persons now resident, or who may hereafter become residents, in the Cherokee Nation, and who are not recognized as citizens of the Cherokee Nation by the constituted authorities thereof, and who are not in the employment of the Cherokee Nation, or in the employment of citizens of the Cherokee Nation in conformity with the laws thereof, or in the employment of the United States Government, and all citizens of the United States who are not resident in the Cherokee Nation under the provisions of treaty or acts of Congress, shall be deemed and held to be intruders and unauthorized persons, within the intent and meaning of section six of the treaty of 1835, and sections twenty-six and twenty-seven of the treaty of July 19, 1866, and shall, together with their personal effects, be removed without delay from the limits of said nation by the United States as trespassers, upon the demand of the principal chief of the Cherokee Nation. In such removal, no houses, barns, outbuildings, fences, orchards, growing crops, or other chattels real, being attached to the soil and belonging to the Cherokee Nation, the owner of the land, shall be removed, damaged, or destroyed, unless it shall become necessary in order to effect the removal of such trespassers: *Provided, always*, That nothing in this section shall be so construed as to affect in any manner the rights of any persons in the Cherokee Nation under the ninth article of the treaty of July 19, 1866.

Second. That article fifteen (15) of the treaty of July 19, 1866, by and between the United States and the Cherokee Nation shall be abrogated and held for naught from and after the day that Congress may ratify this agreement, providing for such cession and relinquishment of title: *Provided*, That the rights of any person or persons heretofore acquired under and by virtue of said article fifteen shall in no manner and to no extent whatever be affected by such abrogation.

Third. The judicial tribunals of the Cherokee Nation shall have exclusive jurisdiction in all civil and criminal cases arising in the Cherokee country, in which members of the Cherokee Nation by nativity or adoption shall be the only parties.

Fourth. The United States shall, without delay, render to the Cherokee Nation, through any agent appointed by authority of the national council, a complete account of moneys due the Cherokee Nation under any of the treaties ratified in the years 1817, 1819, 1825, 1828, 1833, 1835-'6, 1846, 1866, and 1868, and any laws passed by the Congress of the United States for the purpose of carrying said treaties, or any of them, into effect; and upon such accounting should the Cherokee Nation, by its national council, conclude and determine that such accounting is incorrect or unjust, then the Cherokee Nation shall have the right within twelve (12) months to enter suit against the United States in the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for any alleged or declared amount of money promised but withheld by the United States from the Cherokee Nation, under any of said treaties or laws, which may be claimed to be omitted from or improperly or unjustly or illegally adjusted in said accounting; and the Congress of the United States shall at its next session, after such case shall be finally decided and certified to Congress, according to law, appropriate a sufficient sum of money to pay such judgment to the Cherokee Nation, should judgment be rendered in her favor; or, if it shall be found upon such accounting that any sum of money has been so withheld, the amount shall be duly appropriated by Congress, payable to the Cherokee Nation upon the order of its national council, such appropriation to be made by Congress if then in session, and if not, then at the session immediately following such accounting.

Fifth. That any citizen of the Cherokee Nation who, prior to the first day of November, 1891, was a bona fide resident upon and further had, as a farmer and for farming purposes, made permanent and valuable improvements upon any part of the land herein ceded and who has not disposed of the same, but desires to occupy the particular lands so improved as a homestead and for farming purposes, shall have the right to select one-eighth of a section of land, to conform, however, to the United States surveys; such selection to embrace, as far as the above limitation will admit, such improvements. The wife and children of any such citizen shall have the same right of selection that is above given to the citizen, and they shall have the preference in making selections to take any lands improved by the husband and father that he can not take until all of his improved land shall be taken.

That any citizen of the Cherokee Nation not a resident within the land herein ceded, who, prior to the first day of November, 1891, had for farming purposes made valuable and permanent improvements upon any of the land herein ceded, shall have the right to select one-eighth of a section of land to conform to the United States surveys; such selection to embrace, as far as the above limitation will admit, such improvements.

It is further agreed and understood that the number of such allotments shall not exceed seventy (70) in number and the land allotted shall not exceed five thousand and six hundred (5,600) acres; that such allotments shall be made and confirmed under such rules and regulations as shall be prescribed by the Secretary of the Interior, and when so made and confirmed shall be conveyed to the allottees respectively by the United States in fee simple.

It is further agreed that from the price to be paid to the Cherokee Nation for the cession herein provided for there shall be deducted the sum of one dollar and forty cents ($1.40) for each acre so taken in allotment.

Sixth. That in addition to the foregoing enumerated considerations for the cession and relinquishment of title to the lands hereinbefore provided the United States shall pay to the Cherokee Nation, at such time and in such manner as the Cherokee national council shall determine, the sum of eight million five hundred and ninety-five thousand seven hundred and thirty-six and twelve one-hundredth ($8,595,736.12) dollars in excess of the sum of seven hundred and twenty-eight thousand three hundred and eighty-nine and forty-six one-hundredth ($728,389.46) dollars, the aggregate of amounts heretofore appropriated by Congress and charged against the lands of the Cherokees west of the Arkansas River, and also in excess of the amount heretofore paid by the Osage Indians for their reservation. So long as the money or any part of it shall remain in the Treasury of the United States after this agreement shall have become effective, such sum so left in the Treasury of the United States shall bear interest at the rate of five per centum per annum, payable semiannually: *Provided*, That the United States may at any time pay to said Cherokee Nation the whole or any part of said sum and thereupon terminate the obligation of the United States in respect to so much thereof as shall be so paid and in respect to any further interest upon the same: *Provided further*, That should the Cherokee Nation determine to distribute said money, or any part thereof, principal or interest, to any of its citizens, *per capita*, and should the classes of persons provided for in the ninth and fifteenth articles of the treaty of July 19, 1866, claim that in such distribution they have been unjustly or illegally discriminated against, then on complaint made by such persons Congress shall by law authorize a suit in a proper court by and between such classes of persons and the United States and the Cherokee Nation, to determine that question, giving to any party thereto the right of appeal to the Supreme Court of the United States, and providing that such suit or suits may in proper manner be advanced upon the dockets of such courts to secure a speedy hearing of the same, and the United States shall retain a sufficient sum of such money under its control to adjust and relieve such discrimination, should it be adjudged that such discrimination has been made. It is expressly understood that this agreement, ceding and relinquishing the title to the lands herein described, shall not be effective for any purpose whatever until it shall in its entirety be ratified by Congress and the amount of money herein agreed to be paid to the Cherokee Nation for such cession and relinquishment shall have been appropriated by Congress, and placed in the Treasury of the United States subject to the order of the Cherokee national council: *Provided, further*, that nothing contained in this agreement shall have the effect to limit or impair any rights whatever the Cherokee Nation has in or to or over the lands herein ceded until it shall be so ratified by Congress: *And provided further*, That if this agreement shall not be ratified by Congress, and the appropriation of money, as herein provided for, made on or before March 4, 1893, it shall be utterly void.

In witness whereof we have hereunto set our hands the day and year first above written.

DAVID H. JEROME,
ALFRED M. WILSON,
WARREN G. SAYRE,
*Commissioners on the part of the United States.*
ELIAS C. BOUDINOT,
JOSEPH A. SCALES,
ROACH YOUNG,
WILLIAM TRIPLETT,
THOMAS SMITH,
JOSEPH SMALLWOOD,
GEORGE DOWNING,
*Commissioners on the part of the Cherokee Nation.*

In presence of—
CHAS. S. KING.
W. P. BOUDINOT.

*Therefore be it enacted by the national council*, That said agreement be, and the same is hereby, accepted, ratified, and confirmed on the part of the Cherokee Nation, and that the cession and relinquishment of claim, title, and interest recited in the first article of said agreement is hereby made, declared, and enacted to take and have effect in the manner and at the time and in accordance only with the terms recited in said agreement, and the Cherokee Nation hereby gives its consent that such lands when so ceded and relinquished may be included within the territorial limits and jurisdiction of any State or Territory directed or authorized by Congress of the United States: *Provided*, That the sum of one hundred and twelve ($112) dollars shall be deducted from the *per capita* share of money of each and every person who may take an allotment of land according to the provisions of said agreement.

Passed the senate Jan. 2d, 1892.

T. M. BUFFINGTON,
*President of Senate.*
J. L. THOMPSON,
*Clerk of Senate.*

Concurred in by the council Jan. 4th, 1892.

J. B. COBB,
*Speaker pro tempore of Council.*
W. G. FIELDS,
*Clerk of Council.*

Approved January 4th, 1892.

C. J. HARRIS,
*Principal Chief.*

CHEROKEE NATION, *Indian Territory, ss:*

I, the undersigned, principal chief of the Cherokee Nation, hereby certify that the foregoing is a full, true, and complete copy of the act of the national council, approved the 4th day of January, 1892, by me, as principal chief, as the same appears and remains of record in my office; and I further certify that, by the laws of the Cherokee Nation, I am the proper person to make such certificate.

In witness whereof, I have hereunto set my hand and caused to be affixed hereto the great seal of the Cherokee Nation, this 7th day of January, 1892.

C. J. HARRIS,
*Principal Chief Cherokee Nation.*
[SEAL.]
J. A. SCALES,
*Chief Executive Clerk.*

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DEPARTMENT OF THE INTERIOR,
*Secretary's Office, February 8, 1892.*

This agreement negotiated by the Cherokee Commission with the Cherokee Nation is referred to the Assistant Attorney-General with the reports and accompanying papers for his consideration and report upon the legality of the contract, the sufficiency of the proposed bill, and his views upon the question of law relating to the subject.

JOHN W. NOBLE,
*Secretary.*

FEBRUARY 8, 1892.

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DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
*Washington, D. C., February 25, 1892.*

SIR: I have received, by your reference, the report and accompanying papers of the Commission appointed under section 14, act of March 2, 1889 (25 Stats., 980, 1005), to negotiate with the Cherokee Indians for cession to the United States of any claim or interest they may have in or to what is commonly known as the "Cherokee Outlet." It appears from the report of the commissioners that an agreement has been made with the Indians for the cession of their interest in said tract, upon the ratification and approval by Congress of certain considerations specifically set forth. The report and agreement were referred to the Commissioner of Indian Affairs, who, under date of February 6, 1892, reported favorably on the agreement and transmitted with his report the draft of a bill to be submitted to Congress to ratify and carry out the provisions thereof. These papers, together with a petition from certain citizens, transmitted here by order of the President, are referred to me "for consideration and report upon the legality and effect of the contract, the sufficiency of the proposed bill, and his [my] views upon the questions of law relating to the subject."

The act authorizing the appointment of the Commission requires that it shall be proposed to the Cherokee Nation to cede all its rights in the lands in question to the United States "upon the same terms as to payment as is provided in the agreement with the Creek Indians," dated January 19, 1889, and approved by act of March 1, 1889 (25 Stats., 757), and if the Cherokee Nation, by act of its legislative authority, accept the same, the said lands shall become a part of the public domain, etc.

It is not very clear what is meant by the expression, "upon the same terms of payment," as used in the act of 1889, but in the instructions to the Commissioners, approved by you, it seems to be construed to mean that they were to offer to the Cherokees the sum of $1.25 per acre for the ceded land, that being the amount agreed to be paid to the Creeks.

The inquiry, however, is not very material, inasmuch as, if the proposition ever was submitted to the Indians, it was rejected by them. The report of the commissioners is silent upon this subject, but the presumption is that finding the Indians unwilling to accede to said proposition, the commissioners, under your instructions, continued the negotiations until they resulted in the present agreement, which differs materially from that directed to be made by Congress, and embraces other matters not coming under the "terms of payment" for the ceded lands, though part of the consideration for the cession. It is therefore necessary that, before any further action can be taken in the premises, the agreement should be ratified and approved by Congress, it having already received the sanction of the legislative authority of the Cherokee Nation.

The agreement contains two articles: The first relates to the cession, and the second to the consideration therefor.

By the first article it is provided that the Cherokee Nation shall, by act of its legislative authority, cede and relinquish all its title, claim, and interest of every kind in and to the described Territory, containing 8,144,682.91 acres, more or less. This, as stated, has been done, and the cession appears to be in due form to take effect in accordance with the terms recited in the agreement. So that upon the ratification of said agreement and the appropriation of the amount of money therein provided for by Congress, the legal effect will be that the United States will hold said lands free, clear, and discharged from any interest or claim whatever of the Cherokee Nation thereto, provided this action of Congress be taken on or before March 4, 1893.

The considerations for said cession as contained in article 2 are set forth under six subdivisions.

The first provides that all persons who are now, or may hereafter be, within the Cherokee Nation, who are not recognized by the constituted authorities thereof as citizens, or as having a right to be therein under its laws, or who are not employés of the United States or citizens thereof entitled under treaty or act of Congress to reside in the nation, shall be held to be intruders under section 6 of the treaty of 1835 (7 Stats., 478) and sections 26 and 27 of the treaty of July 19, 1866 (14 Stats., 799) and shall, with their personal effects, be removed by the United States from the limits of the nation on demand of the principal chief thereof.

By the article of the treaty of 1835 *supra*, the United States in effect guarantees to protect said Indians from the intrusion of persons attempting to settle within the nation without the consent of the Indians, and promises to cause the removal of such intruders.

This agreement is repeated in article 26 of the treaty of 1866, and reiterated in the next article which declares that it is the duty of the United States Indian agent for said tribe to have removed all persons not lawfully residing or sojourning in the Indian nation.

Notwithstanding the obligations thus entered into by the United States, this subject of the removal of intruders from the Indian lands has been the fruitful source of much contention and friction between the officers of the Indian nation and those of the United States. The Indians claim that under one pretext or another the officers of the United States have failed to enforce the treaty stipulations until now the intruders on the Indian lands exceed 7,000 in number.

Under the treaties the right of self-government has been guaranteed to the Cherokee Nation, provided they passed no laws in conflict with the Constitution and laws of the United States. The Supreme Court of the United States has recognized this status of that nation and decided in effect that no one is entitled to become a citizen thereof unless he complies with the constitution and laws of the nation and is admitted to citizenship thereunder. (Eastern Cherokees *vs.* United States, 117 U. S., 288, 311.)

In these views the Executive Departments of the Government have concurred. But when demand has been made by the Cherokee authorities for the removal of those whom they asserted were intruders, this Department, whilst disclaiming the right to determine who shall become citizens of the Indian nation, has insisted, under the advice of the Attorney-General (16 Ops., 404), that it was incumbent upon the United States first to ascertain whether the alleged intruders were such in fact and in law. And if, upon investigation, it was found those parties were in the opinion of the United States authorities entitled to citizenship, but had been unjustly deprived of or refused their rights, then to decline to remove them. Further than this, it has been insisted by the Indian Office that, where it was determined parties were such intruders and ought to be removed, they should have ample time in which to garner or dispose of their crops and improvements upon the lands they occupied, and because the Indians were not willing to pay these parties what were considered proper prices for said improvements, bad faith was charged and the removals were not made. See letter of Commissioner of Indian Affairs, February 17, 1880, herewith.

More might be said to show how it is that from one cause or another, rightfully or wrongfully, the treaty stipulations have not been carried out, but on the contrary, the Indians claim that the numbers of the intruders have gradually increased, until their presence and arrogance has become intolerable to the Indians, a menace to their peace and prosperity, and a defiance to their laws and authorities.

Under these circumstances, if true, it is not surprising to learn from the report of the commissioners that the Indians represented that "the first and greatest of their grievances was what they were pleased to style the 'blighting curse of intrusion' upon their domain by unauthorized persons," and to insist that ample provision should be made in the contract of sale for the removal of the intruders. Whether the first paragraph of the second article in the agreement will accomplish this purpose remains to be seen. It provides that "persons now residents of or who may hereafter become residents, and (1) who are not recognized as citizens of the Cherokee Nation by the constituted authorities thereof, (2) and who are not in the employment of the Cherokee Nation, or (3) in the employment of citizens of the Cherokee Nation in conformity with the laws thereof, or (4) in the employment of the United States Government, and (5) all citizens of the United States who are not residents of the Cherokee Nation, under the provisions of the treaty or acts of Congress, shall be intruders and unauthorized persons within the intent and meaning of section 6 of the treaty of 1835, and sections 26 and 27 of the treaty of July 19, 1866, and shall, together with their personal effects, be removed without delay from the limit of said nation by the United States as trespassers upon the demand of the principal chief." It then prohibits the removal or destruction of improvements upon the land, unless "necessary in order to effect the removal of such trespassers," and excepts persons in the Cherokee Nation under the ninth article of the treaty of July 19, 1866.

After discussing this provision, the Cherokee Commissioners and the Commissioner of Indian Affairs both are of the opinion that by its adoption the United States is not assuming a new duty or obligation, but only promising anew to perform an old one. In this conclusion I agree. If the intention of the Cherokees was to oust the jurisdiction of the United States to determine whether the person sought to be removed came within the excepted classes, or to prevent the United States from enforcing its laws for the protection of its citizens within the Territory, then the language chosen does not accomplish this object. I am of the opinion that the executive, legislative, and judicial departments of this Government will retain the right to redress any wrong that might be inflicted by the action of the Cherokee courts, or the "demand of the principal chief." With this construction, I see no objection to the proposed immediate removal of those who are intruders and illegally within the bounds of the Cherokee territory; but, if there is doubt on this question, the reservation of this authority in the Government ought to be expressed.

I am not greatly impressed with the hardship of any of these provisions, since most of the intruders, having no rights to the lands, have been occupying and receiving the profits therefrom for many years past, and to that extent deprived the Indians of their property.

The second clause of article 2 of the proposed agreement provides for the abrogation of article 15 of the treaty of July 15, 1866. That article authorized the settlement within the Cherokee Nation, east of the ninety-sixth degree of longitude, of other tribes of Indians on conditions prescribed in said article.

By the abrogation of said article the United States would not be in a position to insist upon the settlement of other Indians within the nation. The Cherokees do not want other Indians introduced among them, and I can think of no good reason why their wish in this respect should not be gratified. Their condition is different now from what it was twenty-six years ago, when the treaty of 1866 was ratified. They have made rapid strides in the march of civilization and education, and feel themselves fully competent to regulate their own domestic affairs, if let alone, and no disturbing or uncongenial element is forced into their midst to disturb that homogeneity which they evidently believe to be essential to their prosperity and happiness.

Perhaps their experience with the Indians who have been settled in their country, under that article, has not been pleasant, or it may be they are only apprehensive as to the future. Whatever may be their reason, the wish seems to be a reasonable one. The more especially so, in view of the statement made by the Commissioner of Indian Affairs, that if all the lands in the Indian Nation were now allotted to those who would be entitled, there would be about 170 acres to each one. When it is remembered that large portions of the lands referred to are necessarily unsuited for agricultural purposes, and the value of the allotment would thus be reduced, and it will be readily seen that in this fact there is a very good reason why the Cherokees do not want their population increased by the addition of outside tribes of Indians.

Rights acquired under the article proposed to be repealed seem to be amply protected by the terms of the proposed agreement.

The third paragraph of the second article of the agreement provides that "The judicial tribunals of the Cherokee Nation shall have exclusive jurisdiction in all civil and criminal cases arising in the Cherokee country in which members of the Cherokee Nation by nativity, or adoption, shall be the only parties."

This provision is somewhat similar to that contained in article 13 of the treaty of 1866, but differs from it in what may be quite an essential particular. The said article and treaty, after agreeing that a court or courts may be established by the United States in the nation with such jurisdiction as may be prescribed, then provides that the Cherokee tribunals shall "retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation by nativity, or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty."

It is to be observed that in the present agreement the recognition of the right of the United States to establish a court with jurisdiction over the nation is ignored and "exclusive jurisdiction" is given to the Cherokee tribunals in all cases arising in that country in which members of the nation are the only parties, omitting the important clause of the treaty of 1866, "except as otherwise provided in this treaty."

By the second paragraph of the third clause of article 12 of that treaty it is provided that no law shall be enacted by the Cherokee Nation "inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States." Therefore, the "exclusive" jurisdiction there to be retained was subject to the provisions of the Constitution and laws of the United States; and the omission of those or other words of similar import from the present agreement is a matter of sufficient importance to be commented upon.

Doubtless the United States, by virtue of its sovereignty, possesses the right of supervision over this Indian people and all their affairs, and whenever the exigencies of the occasion may require the exercise of this extraordinary power such laws as may be necessary and just will be enacted, promotive alike of the welfare of the Indians and the people of the United States. And it might also, perhaps, be said that the agreement under consideration would be construed in *pari materia* with other agreements with, or legislation pertaining to them, and to the Indians generally, and thus it would be determined that the "exclusive" jurisdiction referred to was necessarily to be controlled by the Constitution and laws of the United States.

But the proposed agreement when adopted by Congress will become a law without this distinct declaration, or any provision therein for determining whether or not this "exclusive" jurisdiction has been exercised within proper bounds. Cases may arise where citizens of the nation, who are also citizens of the United States, may be aggrieved by the action of the Indian courts. Clearly it is the duty of the United States to protect its citizens, yet the judgment of the court of "exclusive" jurisdiction is final, so far as this agreement goes, inasmuch as no limitation thereon is prescribed nor appeal provided therefrom.

The provision I am now considering might be held to repeal *pro tanto* section 533, Revised Statutes of the United States, conferring upon the United States district court for the western district of Arkansas jurisdiction over the Indian Territory west of the Missouri and Arkansas; for a white man, though adopted as an Indian, under the decision of the case of the United States *vs.* Rogers (4 Howard, 567,572) would still be a white man so far as to the jurisdiction of the United States circuit courts is concerned. The same construction might be given as to the act of March 1, 1889 (25 Stats. 783), "to establish a United States court in the Indian Territory," which gives "exclusive original jurisdiction over all offenses against the laws of the United States committed in the Indian Territory * * * not punishable by death or by imprisonment at hard labor;" and gives jurisdiction in all civil cases "between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any State or Territory therein, and any citizen of or person or persons residing or found in the Indian Territory. * * * *Provided*, That nothing herein contained shall be so construed as to give the court jurisdiction over controversies between persons of Indian blood only."

Indians may also become citizens of the United States: (1) by taking allotments; (2) by separating from their tribes and adopting the habits of civilized life (24 Stats., 388); (3) in case of an Indian woman, by marriage with a citizen of the United States (25 Stats., 392); and (4) under the provisions of the Oklahoma act they may be naturalized, and in such cases they are not to lose any rights as member of the tribe or nation to which they belong (26 Stats., 99).

If the Indian courts should attempt to exercise exclusive jurisdiction over these, and they should claim protection of the United States courts, it is easy to see that complications and conflicts would arise.

But it is not necessary to say more on this point. I think enough has been said to show that the "exclusive" jurisdiction provision is stated too broadly, and is calculated to work mischief, because subject to misconstruction on the part of the Indians. This would be avoided by expressing in positive language the treaty limitations.

Should you agree with this view, an addition should be made to the first section of the bill as drawn by the Commissioner of Indian Affairs, as follows: "Subject to the Constitution and laws of the United States." If these words be added, it would obviate the above suggested objections to the first paragraph of the second article of the agreement, as well as those to the third paragraph of said article and would be in harmony with the treaties with the Cherokees.

The fourth and next provision of article 2 of the agreement requires the United States to render to the Cherokee Nation a complete accounting of all moneys agreed to be paid to the Indians, or which they may be entitled to under any treaty or act of Congress since 1817. And if said accounting is satisfactory Congress shall make the necessary appropriation to pay the same. But if the accounting is not satisfactory, then the Cherokees to have the right to institute suit in the Court of Claims against the United States for the claimed amount, and Congress is to make the necessary appropriation to pay the judgment, if any, recovered.

I see nothing in the stipulations herein to comment upon. It seems right and promotive of good feeling that there should be a full and final settlement of all claims and accounts of these Indians against the United States, and I think the terms of agreement are sufficiently clear to secure such accounting.

The Commissioner of Indian Affairs asks for a special appropriation of $5,000 to enable him to make the accounting. This is an administrative matter, about which I am not competent to advise, in the absence of a thorough knowledge of the condition of the books, of the character of the work to be done, and of the force now in that office.

The fifth consideration set forth in article 2 of the agreement is to the effect that "any citizen" of the Cherokee Nation who, "prior to the first day of November, 1891," was a bona fide resident upon, or had as a farmer made permanent improvements upon any part of the ceded lands and has not yet disposed of them, may be allotted the lands so improved as a homestead to the extent of 80 acres for himself and a like amount to his wife and each child, to conform to the public surveys and to cover the improvements as far as made, and to the extent of the allotments. And any citizen of said nation, who prior to said date had in the same manner improved a portion of the ceded lands but not resided thereon, shall be entitled to an allotment of the same to the extent of 80 acres, to be taken in like manner. It is further agreed that the number of said allotments shall not exceed seventy, and that the quantity of the land so allotted shall not exceed 5,600 acres in quantity. For all lands thus allotted the sum of $1.40 per acre is to be deducted from the amount agreed to be paid to the nation for the ceded lands.

It seems to me that the provisons recited are fair and just, and in no way objectionabe. Every possible guard seems to be thrown around the conditions on which the allotments are to be obtained, so as to prevent fraud on the part of the Indians or others in this respect. The allottees, to obtain allotments for themselves and family, must make it affirmatively appear that they were bona fide residents of the tract claimed, and had permanent and valuable improvements thereon "prior" to November, 1891. The nonresident allottees, who can only get 80 acres, must show that they had improvements upon the land "prior" to the same date of like character and purpose. And in no event may the quantity thus allotted exceed the amount stated.

I am thus particular in stating and repeating the conditions on which these allotments are to be made, because representations have been made to the President that extensive frauds were being concocted and perpetrated by parties, whites and Indians, who have gone upon the ceded lands and are claiming or preparing to claim a right thereto under this provision of the agreement. Petitions containing these representations have been sent to the President, and by him transmitted to you, with the request that you give the matter personal attention, and have a provision inserted in the bill to be submitted to Congress to prevent the consummation of the proposed frauds.

It will be seen, upon reading the agreement, that no such frauds can be perpetrated, and that it is entirely unnecessary to insert in the proposed act anything to guard against them.

In addition to the terms and conditions specified in the agreement, under which alone allotments may be obtained, it is further stipulated therein that such allotments are to be made and confirmed under rules and regulations to be prescribed by the Secretary of the Interior. Therefore, should further observation or reflection show that further rules or regulations in that behalf are necessary, you would be fully authorized to establish any such that would not be in violation of the terms of the agreement.

No objection is suggested by the Commissioner of Indian Affairs to the condition that, when said allotments are confirmed, patents in fee simple shall be issued therefor. I know of no reason why such patents should or should not be issued to these Indians for these lands. It is rather an unusual provision, but being entirely a matter of administrative policy, the Commissioner of Indian Affairs is more competent to advise you than I am, and your own familiarity with the subject will enable you to determine whether this particular condition be wise or not.

The sixth consideration for the cession of the territory, set forth in article 2 of the agreement is the appropriation or investment for or payment to the Indians of the sum of $8,595,736.12.

The Commissioner of Indian Affairs, in his report upon this agreement, says that if the Cherokees have in the ceded territory only an easement, a right of passage over it, then the price agreed to be paid is a very excessive one. If, on the other hand, they have "the title of property in perpetuity," as he thinks they have, he is of the opinion that the price agreed upon is not too great for the relinquishment of their rights.

I do not deem it necessary or appropriate under the circumstances to discuss the title of the Cherokees to the Outlet.

In a letter from you to the Hon. I. S. Struble, chairman of the House Committee on Territories, in the Fifty-first Congress, under date of February 14, 1891, you discussed exhaustively this question of the Indian title to the ceded lands, and, in my opinion, showed conclusively that they had merely an easement in said lands. In view of your conclusion then, in which I concurred, I think further discussion is unnecessary. The communication of the Commissioner of Indian Affairs of January 26, 1892, discussing the title of the Cherokees to the Outlet, referred to by him in his letter of February 6, 1892, has been examined, but I find nothing therein to change my views on this subject.

It seems to me that, practically, it is of little moment whether the Indian title is, as the Commissioner of Indian Affairs terms it, one of "property and perpetuity," or a mere easement. The Indian right, whatever its character, was exclusive as to possession and indefinite as to time, subject to the provisions of the treaty of 1866, and would continue until lawfully extinguished.

Therefore, so far as the United States is concerned the contingency of the restoration of said lands to the public domain, for the purpose of settlement by agreement with the Indians, is just as remote under the one estate as the other.

In addition, by the rapid growth of our population, this land is needed for homes for the people. Congress has recognized some right or claim to the Outlet in the Indians, and in the act creating the Cherokee Commission authorized the purchase of all their title, claim, or interest of every kind or character in and to said lands, at the price of $1.25 per acre. The price agreed upon, according to the report of the Commission, is about $1.40 per acre, and the propriety of paying that price, and thus settling the complications which have so long existed, and opening these lands to settlement by our own citizens, is one that Congress alone can decide.

It is further provided that the United States shall pay over the whole or any part of said fund at any time, either of their own volition or on demand of the Cherokee Nation; and if the Cherokee Nation shall cause said money, or any portion thereof, to be distributed "per capita," and exclude therefrom the classes of persons (freedmen and others) provided for in articles 9 and 15 of the treaty of 1866, on complaint of the parties thus discriminated against, Congress shall authorize them to bring suit against the United States and the Cherokee Nation, and if recovery is had, the United States shall pay the amount thereof out of "such money," of which they "shall retain a sufficient sum" out of that appropriated to pay for the ceded lands, and which then may be in the Treasury.

The conditions of the above clause seem to be of doubtful expediency, if not of positive hardship, to those who may be discriminated against. In the first place, the clause seems to apply only where the money is distributed per capita and unjust discrimination is made. Then the parties aggrieved can get no relief until Congress passes a law authorizing them to bring suit. When the law of Congress is passed, the suit brought, and final judgment obtained, after defendants have exhausted their right of appeal to the Supreme Court, the payment of the judgment is to be made out of such part of the purchase money, for the lands now ceded, as may be in the Treasury, or retained therein for that purpose. Of course, if the whole amount of said money shall have been paid to the Cherokees, as well might be under the agreement, before the unjust distribution be made, those wronged would, under the terms of the agreement, be without remedy. Congress, however, is not without the power to afford a remedy in such case, if it should occur, for Congress, if it thought proper, could order the amount due to be paid over to the proper parties out of other moneys belonging to the Cherokees, as was formerly done, in case of the Cherokee freedmen, under act of October 19, 1888 (25 Stats., 608).

I think, therefore, this provision with its defects is not an insuperable objection to the ratification of the agreement, as it is clearly in the power of Congress to afford adequate relief if necessary.

In what has been written I have already suggested an amendment to section 1 of the proposed law as drawn by the Commissioner of Indian Affairs. I have no suggestions to make as to the provisions of sections 2, 3, and 4 of the same, which seem to be sufficiently clear and specific to accomplish the objects to be attained.

Section 5 of the proposed act authorizes the President, when he may deem it advisable, to open by proclamation the ceded lands in accordance with the provisions of section 14 of the act of March 2, 1889 (25 Stats., 980, 1005).

This section is the one which originally provided for the appointment of commissioners to negotiate with the Cherokees for the cession, and Congress, in the same section, determined that these lands, when acquired, should be thus disposed of. But since that time, the act of May 2, 1890 (26 Stat., 81) "to provide a temporary government for the Territory of Oklahoma" has been passed, and by its first section it is provided that, "Whenever the interest of the Cherokee Indians in the land known as the Cherokee Outlet shall have been extinguished and the President shall make proclamation thereof, said Outlet shall thereupon and without further legislation become a part of the Territory of Oklahoma;" and other sections of said act provide for the disposition of the lands within said Territory.

By the Indian appropriation bill of March 3, 1891 (26 Stats., 989), are enacted other provisions applicable to the lands in question, and which, it seems proper, should be referred to in the proposed act, notably, part of section 17, section 18, on page 1026, section 37, on page 1043, and section 38, on page 1044.

Section 17 fixes the area of the counties at not less than "seven" hundred miles; with this exception, and the concluding proviso thereto, it is repeated verbatim in section 37. It is, therefore, not necessary to adopt the whole of section 17, but only the last proviso.

This being so, section 5 of the said bill should be amended by inserting before the word "Provided," where it first occurs, the following: "and also subject to the provisions of the act of Congress, approved May 2, 1890, entitled, 'An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes;' "

"Also subject to the second proviso of section 17, the whole of sections 18, 37, and 38 of the act of March 3, 1891, entitled 'An act making appropriations for the current expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1892, and for other purposes.' "

But it does not clearly appear that the lands thus made subject to entry are to be paid for, or at what price.

In order to reimburse the United States for its outlay, in respect to said lands, in accordance with the policy heretofore adopted, it would seem to be proper that the settlers should be required to pay $1.50 per acre for said lands, which sum would cover the price per acre paid by the United States, and, probably, the expenses of the commission in negotiating the agreement. To this end an amendment should be made to said section 5, to come in at the close thereof, as follows:

"*Provided, however*, That each settler on said lands, under and in accordance with the provisions of the homestead laws, shall, before receiving patent for his homestead, pay to the United States for the land so taken by him, in addition to the fees provided by law, the sum of $1.50 per acre."

This amendment, I think, will make the matter of payment clear, and perfect the bill, where otherwise there may be room for doubt.

It is observed that the Commissioner of Indian Affairs has inserted a proviso in the proposed act, excepting from settlement and entry the lands within the reservation for the Chilocco Indian school, located in the northeastern portion of the Outlet, containing about 8,640 acres. If this be done it would seem that some similar provision should be made whereby the Fort Supply Military Reservation in the western part of the ceded lands could be protected. Whether the whole of these reservations should be reserved from settlement, I have no means of knowledge, but the power to reserve lands for public purposes rests with the President, and it may well be left to his judgment; or the object will be attained if the following be added to said proviso:

"*Provided also*, That the President may in his said proclamation, or by executive order, reserve such lands within the limits of said cession as in his opinion are required for public purposes, and the lands while so reserved shall not be subject to settlement or entry under any of the laws of the United States."

I think it would be well also, out of abundant caution, to add the following, to come after the last proviso:

"*And provided also*, That until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto."

Herewith are returned the papers sent me.

Very respectfully,

GEO. H. SHIELDS,
*Assistant Attorney-General.*

The SECRETARY OF THE INTERIOR.

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**A BILL to ratify and confirm an agreement with the Cherokee Nation of Indians of the Indian Territory, to make appropriation for carrying out the same, and for other purposes.**

Whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, duly appointed commissioners on the part of the United States, did, on the nineteenth day of December, eighteen hundred and ninety-one, conclude an agreement with Elias C. Boudinot, Joseph A. Scales, George Downing, Roach Young, Thomas Smith, William Triplett, and Joseph Smallwood, duly appointed commissioners on the part of the Cherokee Nation of Indians in the Indian Territory; and

Whereas the Cherokee national council did, by an act approved by the principal chief of the said nation on the fourth day of January, eighteen hundred and ninety-two, accept, ratify, and confirm said agreement on behalf of the said Cherokee Nation, which said act of the said national council of the Cherokee Nation is in words and figures as follows, to wit:

An act to ratify and confirm certain articles of agreement by and between the United States and the Cherokee Nation of Indians, in the Indian Territory.

Whereas it is provided by section fourteen of the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1889, and for other purposes," approved March 2nd, 1889, that—

"SEC. 14. The President is hereby authorized to appoint three commissioners, not more than two of whom shall be members of the same political party, to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiations shall be reported to the President and by him to Congress at its next session, and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same, for ratification, and for this purpose the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, to be immediately available: *Provided*, That said commission is further authorized to submit to the Cherokee Nation the proposition that said nation shall cede to the United States, in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians of date January nineteenth, eighteen hundred and eighty-nine, and ratified by the present Congress; and if said Cherokee Nation shall accept and, by act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain for the purpose of such disposition as is herein provided, and the President is authorized, as soon thereafter as he may deem advisable, by proclamation, to open said lands to settlement in the same manner and to the same effect as in this act provided concerning the lands acquired from said Creek Indians; but until said lands are opened for settlement by proclamation of the President no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto."

And whereas David H. Jerome, Alfred M. Wilson, and Warren G. Sayre have been duly appointed, qualified, and commissioned as such commissioners; and

Whereas by an act of the Cherokee national council approved November 16, 1891, among other things, it is provided:

"That the principal chief is hereby authorized, by and with the advice and consent of the senate, to appoint a commission of seven persons with authority to meet and enter into negotiations with the above-named commission, appointed by the President of the United States, for the cession of the lands of the Cherokee Nation west of the 96th degree of west longitude, and for the final adjustment of all questions of interest between the United States and the Cherokee Nation which are now unsettled; and it shall be the duty of said commission on the part of the Cherokee Nation to report their proceedings in full to the national council for their approval and ratification, and that of the Cherokee people, in such manner as the national council may decide to be necessary, before the same shall be obligatory and binding on the Cherokee Nation."

And whereas Elias C. Boudinot, Joseph A. Scales, Roach Young, William Triplett, Thomas Smith, Joseph Smallwood, and George Downing have been duly appointed and qualified as such commissioners; and

Whereas said commissioners, so representing the United States upon the one part, and the Cherokee Nation upon the other part, have made, concluded, and signed certain articles of agreement in the words and figures following, to wit:

Articles of agreement made and concluded at Tahlequah, in the Indian Territory, on the 19th day of December, A. D. 1891, by and between David H. Jerome, Alfred M. Wilson and Warren G. Sayre, commissioners on the part of the United States, and Elias C. Boudinot, Joseph A. Scales, George Downing, Roach Young, Thomas Smith, William Triplett, and Joseph Smallwood, commissioners on the part of the Cherokee Nation.

### ARTICLE I.

The Cherokee Nation by act duly passed, shall cede and relinquish all its title, claim, and interest of every kind and character in and to that part of the Indian

Territory bounded on the west by the one hundredth (100°) degree of west longitude; on the north by the State of Kansas; on the east by the ninety-sixth (96°) degree of west longitude, and on the south by the Creek Nation, the Territory of Oklahoma, and the Cheyenne and Arapahoe Reservation created or defined by Executive order dated August 10, 1869. The tract of land embraced within the above boundaries containing eight million one hundred and forty-four thousand six hundred and eighty-two and ninety-one one-hundredths (8,144,682.91) acres, more or less.

## ARTICLE II.

For and in consideration of the above cession and relinquishment, the United States agrees:

First. That all persons now resident, or who may hereafter become residents, in the Cherokee Nation, and who are not recognized as citizens of the Cherokee Nation by the constituted authorities thereof, and who are not in the employment of the Cherokee Nation, or in the employment of citizens of the Cherokee Nation, in conformity with the laws thereof, or in the employment of the United States Government, and all citizens of the United States who are not resident in the Cherokee Nation under the provisions of treaty or acts of Congress, shall be deemed and held to be intruders and unauthorized persons within the intent and meaning of section six of the treaty of 1835, and sections twenty-six and twenty-seven of the treaty of July 19, 1866, and shall, together with their personal effects, be removed without delay from the limits of said nation by the United States, as trespassers, upon the demand of the principal chief of the Cherokee Nation. In such removal no houses, barns, outbuildings, fences, orchards, growing crops, or other chattels real, being attached to the soil and belonging to the Cherokee Nation, the owner of the land, shall be removed, damaged, or destroyed, unless it shall become necessary in order to effect the removal of such trespassers: *Provided, always*, That nothing in this section shall be so construed as to affect in any manner the rights of any persons in the Cherokee Nation under the ninth article of the treaty of July 19, 1866.

Second. That article fifteen (15) of the treaty of July 19, 1866, by and between the United States and the Cherokee Nation, shall be abrogated and held for naught from and after the day that Congress may ratify this agreement providing for such cession and relinquishment of title: *Provided*, That the rights of any person or persons heretofore acquired under and by virtue of said article fifteen shall in no manner, and to no extent whatever, be affected by such abrogation.

Third. The judicial tribunals of the Cherokee Nation shall have exclusive jurisdiction in all civil and criminal cases arising in the Cherokee country, in which members of the Cherokee Nation, by nativity or adoption, shall be the only parties.

Fourth. The United States shall, without delay, render to the Cherokee Nation, through any agent appointed by authority of the national council, a complete account of monies due the Cherokee Nation under any of the treaties ratified in the years 1817, 1819, 1825, 1828, 1833, 1835-6, 1846, 1866, and 1868, and any laws passed by the Congress of the United States for the purpose of carrying said treaties, or any of them, into effect; and upon such accounting should the Cherokee Nation by its national council, conclude and determine that such accounting is incorrect or unjust, then the Cherokee Nation shall have the right within twelve (12) months to enter suit against the United States, in the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for any alleged or declared amount of money promised but withheld by the United States from the Cherokee Nation, under any of said treaties or laws, which may be claimed to be omitted from, or improperly or unjustly or illegally adjusted in said accounting; and the Congress of the United States shall, at its next session after such case shall be finally decided and certified to Congress according to law, appropriate a sufficient sum of money to pay such judgment to the Cherokee Nation should judgment be rendered in her favor; or if it shall be found upon such accounting that any sum of money has been so withheld, the amount shall be duly appropriated by Congress, payable to the Cherokee Nation, upon the order of its national council, such appropriation to be made by Congress if then in session, and if not, then at the session immediately following such accounting.

Fifth. That any citizen of the Cherokee Nation, who, prior to the first day of November, 1891, was a bona fide resident upon and further had, as a farmer and for farming purposes, made permanent and valuable improvements upon any part of the land herein ceded and who has not disposed of the same, but desires to occupy the particular lands so improved as a homestead and for farming purposes, shall have the right to select one-eighth of a section of land, to conform however to the United States surveys; such selection to embrace, as far as the above limitation will admit, such improvements. The wife and children of any such citizen shall have the same right of selection that is above given to the citizen, and they shall have the preference in making selections to take any lands improved by the husband and father that he can not take—until all of his improved land shall be taken.

That any citizen of the Cherokee Nation not a resident within the land herein ceded, who, prior to the first day of November, 1891, had for farming purposes made valuable and permanent improvements upon any of the land herein ceded, shall have the right to select one-eighth of a section of land to conform to the United States surveys; such selection to embrace, as far as the above limitation will admit, such improvements.

It is further agreed and understood that the number of such allotments shall not exceed seventy (70) in number, and the land allotted shall not exceed five thousand and six hundred (5,600) acres; that such allotments shall be made and confirmed under such rules and regulations as shall be prescribed by the Secretary of the Interior, and when so made and confirmed shall be conveyed to the allottees respectively by the United States in fee simple.

It is further agreed that from the price to be paid to the Cherokee Nation for the cession herein provided for there shall be deducted the sum of one dollar and forty cents ($1.40) for each acre so taken in allotment.

Sixth. That in addition to the foregoing enumerated considerations for the cession and relinquishment of title to the lands hereinbefore provided, the United States shall pay to the Cherokee Nation at such time, and in such manner as the Cherokee national council shall determine the sum of eight million five hundred and ninety-five thousand seven hundred and thirty-six and twelve one-hundredth (8,595,736.12) dollars, in excess of the sum of seven hundred and twenty-eight thousand three hundred and eighty-nine and forty-six one hundredth ($728,389.46) dollars, the aggregate of amounts heretofore appropriated by Congress and charged against the lands of the Cherokees west of the Arkansas River; and also in excess of the amount heretofore paid by the Osage Indians for their reservation. So long as the money, or any part of it, shall remain in the Treasury of the United States after this agreement shall have become effective such sum so left in the Treasury of the United States shall bear interest at the rate of 5 per cent per annum, payable semiannually.

*Provided*, That the United States may at any time pay to said Cherokee Nation the whole or any part of said sum, and thereupon terminate the obligation of the United States in respect to so much thereof as shall be so paid, and in respect to any further interest upon the same: *Provided further*, That should the Cherokee Nation determine to distribute said money or any part thereof, principal or interest, to any of its citizens *per capita*, and should the classes of persons provided for in the ninth and fifteenth articles of the treaty of July 19, 1866, claim that in such distribution they have been unjustly or illegally discriminated against, then, on complaint made by such persons, Congress shall by law authorize a suit in a proper court by and between such classes of persons and the United States and the Cherokee Nation to determine that question, giving to any party thereto the right of appeal to the Supreme Court of the United States, and providing that such suit or suits may in proper manner be advanced upon the dockets of such courts to secure a speedy hearing of the same; and the United States shall retain a sufficient sum of such money under its control to adjust and relieve such discrimination, should it be adjudged that such discrimination has been made. It is expressly understood that this agreement ceding and relinquishing the title to the lands herein described shall not be effective for any purpose whatever until it shall in its entirety be ratified by Congress, and the amount of money herein agreed to be paid to the Cherokee Nation for such cession and relinquishment shall have been appropriated by Congress and placed in the Treasury of the United States, subject to the order of the Cherokee national council: *Provided further*, That nothing contained in this agreement shall have the effect to limit or impair any rights whatever the Cherokee Nation has in or to or over the lands herein ceded until it shall be so ratified by Congress; and

*Provided further*, That if this agreement shall not be ratified by Congress and the appropriation of money, as herein provided for, made on or before March 4, 1893, it shall be utterly void.

In witness whereof we have hereunto set our hands, the day and year first above written.

DAVID H. JEROME,
ALFRED M. WILSON,
WARREN G. SAYRE,
*Commissioners on the part of the United States.*
ELIAS C. BOUDINOT,
JOSEPH A. SCALES,
ROACH YOUNG,
WILLIAM TRIPLETT,
THOMAS SMITH,
JOSEPH SMALLWOOD,
GEORGE DOWNING,
*Commissioners on the part of the Cherokee Nation.*

In presence of
CHAS. S. KING,
W. P. BOUDINOT.

Therefore, be it enacted by the national council, That said agreement be, and the same is hereby, accepted, ratified, and confirmed on the part of the Cherokee Nation, and that the cession and relinquishment of claim, title, and interest recited in the first article of said agreement is hereby made, declared, and enacted to take and have effect in the manner, and at the time, and in accordance with the terms recited in said agreement; and the Cherokee Nation hereby gives its consent that such lands when so ceded and relinquished may be included within the territorial limits and jurisdiction of any State or Territory directed or authorized by Congress of the United States: *Provided*, That the sum of one hundred and twelve ($112) dollars shall be deducted from the per capita share of money of each and every person who may take an allotment of land according to the provisions of said agreement.

Passed the senate Jan. 2, 1892.

T. M. BUFFINGTON,
*President of the Senate.*
J. L. THOMPSON,
*Clerk of Senate.*

Concurred in by the council Jan. 4th, 1892.

J. B. COBB,
*Speaker pro tem. of Council.*
W. G. FIELDS,
*Clerk of Council.*

Approved January 4th, 1892.

C. J. HARRIS,
*Principal Chief.*

CHEROKEE NATION, *Indian Territory, ss:*

I, the undersigned, principal chief of the Cherokee Nation, hereby certify that the foregoing is a full, true, and complete copy of the act of the national council, approved the 4th day of January, 1892, by me as principal chief, as the same appears and remains of record in my office; and I further certify that by the laws of the Cherokee Nation I am the proper person to make such certificate.

In witness whereof I have hereunto set my hand and caused to be affixed hereto the great seal of the Cherokee Nation, this 7th day of January, 1892.

[SEAL.]
C. J. HARRIS,
*Principal Chief, Cherokee Nation.*

J. A. SCALES,
*Chief Executive Clerk.*

Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the agreement recited, accepted, ratified, and confirmed on behalf of the Cherokee Nation in the said act of the national council of that nation be, and the same is hereby, accepted, ratified, and confirmed, subject to the Constitution and laws of the United States.

SEC. 2. That to enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to effect the removal of intruders from within the territory of the Cherokee Nation, as required by the first subdivision of article two of said agreement, the sum of three thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated.

SEC. 3. That, to enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to employ such expert person or persons and assistants as may be necessary to properly render a complete account to the Cherokee Nation of moneys due said nation, as required in the fourth subdivision of article two of said agreement, the sum of five thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated.

SEC. 4. That, for the purpose of making the compensation provided for in said agreement, the sum of eight million five hundred and ninety-five thousand seven hundred and thirty-six and twelve one-hundredths dollars be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated, to be paid in the manner provided for in article two of said agreement.

SEC. 5. That the President is hereby authorized, as soon after the approval of this act as he may deem advisable, by proclamation to open said lands to settlement as provided in section fourteen of the act of Congress approved March second, eighteen hundred and eighty-nine, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes" (twenty-fifth United States Statutes, page ten hundred and five); and also subject to the provisions of the act of Congress, approved May 2, 1890, entitled "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes;" also subject to the second proviso of section 17, the whole of sections 18, 37, and 38, of the act of March 3, 1891, entitled "An act making appropriations for the current expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and ninety-two, and for other purposes."

*Provided*, That sections thirteen, fourteen, fifteen, sixteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, and the east half of sections seventeen, twenty, and twenty-nine, all in township number twenty-nine north, of range number two east of the Indian meridian, the same being lands reserved by Executive order dated July twelfth, eighteen hundred and eighty-four, for use of and in connection with the Chilocco Indian Industrial School in the Indian Territory, shall not be subject to public settlement, but shall continue to be reserved for the purposes for which they were set apart in the said Executive order:

*Provided, however*, That each settler on said lands, under and in accordance with the provisions of the homestead laws, shall, before receiving patent for his homestead, pay to the United States for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and fifty cents per acre.

*Provided also*, That the President may in his said proclamation, or by Executive order, reserve such lands within the limits of said cession, as in his opinion are required for public purposes, and the lands, while so reserved, shall not be subject to settlement or entry under any of the laws of the United States.

*And provided also*, That until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto.

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DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
*Washington, February 17, 1890.*

SIR: * * * As early as December 10, 1869, the national council of the Cherokee Nation adopted a joint resolution authorizing the principal chief of that nation to advise this office and the North Carolina Cherokee Indians of the willingness of the said nation to receive such of the said Indians as would remove west, without expense to the Cherokee treasury, and become identified as citizens of the Cherokee Nation.

In order to provide a means of identifying such Cherokees as should thereafter accept the invitation contained in said resolution, a law was passed by the Cherokee council and approved by the principal chief on November 20, 1870, declaring that all such Cherokees as may hereafter remove into the Cherokee Nation and permanently locate therein as citizens thereof shall be deemed as Cherokee citizens, upon the condition that they should enroll themselves before the chief justice of the supreme court of that nation within two months after their arrival therein, making satisfactory showing to the said chief justice of their Cherokee blood.

In the preamble to the said law the authorities of the Cherokee Nation acknowledged the treaty rights of the Eastern Cherokees by reciting that "Whereas, by treaty stipulation, that class of Cherokees known as 'North Carolina Cherokees' are, on their removal and permanent location within the limits of the Cherokee Nation, entitled to all the rights and privileges of citizens of the same," etc.

It appears that by an act of December 7, 1871, this law was amended so as to limit the authority of the chief justice in citizenship cases to the taking of testimony, the right of final action being reserved to the national council.

This question of intruders and disputed citizens in the Cherokee Nation has been a source of much controversy between this Department and the authorities of that nation since 1874, when, at the request of said authorities, Indian Agent J. B. Jones, under date of September 26, 1874, reported the presence of large numbers of intruders whose removal was desired by the said authorities. Upon an investigation directed with a view to complying with this proper and legal request, the fact was developed that a large number of those who were reported by direction of the Cherokee council as intruders, presented prima facie evidence of their right to citizenship; they had repeatedly submitted their petitions for citizenship to the courts and council, and had been ignored or denied a hearing. In some cases it appeared that, after a full hearing, and an affirmative declaration of their rights by the courts, the council had directed the names of the applicants to be placed upon the list of intruders, and a demand had thereupon been made upon this Department for their removal.

Of those presenting prima facie evidence of rights in the Cherokee Nation, who were affected by the demand of the council of that nation for the removal of intruders therefrom, there were three classes, as follows:

First. White men who had married Cherokee women under the provisions of article 15 of the laws of the Cherokee Nation, and were entitled to citizenship under section 5 of the amendments to the third article of the Cherokee constitution;

Second. Persons of Cherokee blood who had recently removed to the nation; and

Third. Freedmen entitled under the ninth artitcle of the treaty of 1866. (14 Stat., 799.)

Taking the ground that as the treaties with the Cherokees were not with the authorities of the Cherokee Nation, but with the whole Cherokee people, by which the Government was bound in the execution thereof to see that every individual member of the tribe was fully protected in his rights thereunder (5 Opinions Attorneys-General, 320), and that as a Cherokee could not expatriate himself or be expatriated by Cherokee authority (14 Opinions Attorneys-General, 296, 297, taken in connection with decision of the Supreme Court, 5 Peters, 1) he must be, wherever he resides within the limits of the United States, without respect to the degree of consanguinity, regarded a Cherokee citizen, with indefeasible, vested interests in the property and funds of that nation, this office declined in a letter, December 8, 1876, to Charles Thompson, principal chief Cherokee Nation, to take action looking to the removal of claimants from the said nation who could establish prima facie their right to remain there as citizens, until the national council should have devised some uniform and just system of rules by which the Cherokee courts should hear and finally determine the rights of such claimants, and a full and impartial hearing had been granted to every individual charged with being an intruder, desiring it, and until a determination should have been reached in the case of each in accordance therewith, and the action taken had been submitted for the approval of the Secretary of the Interior.

It was suggested in that letter to Chief Thompson that by council enactment provision should be made for the trial of all cases of citizenship by the several circuit courts of the Cherokee Nation under rules to be approved by the Secretary of the Interior. In a report of February 6, 1877, this position was adhered to, and it was approved by the Department, in a letter of February 21, 1877, giving instruction, as follows:

"To the end, therefore, that exact justice may be done and the question at issue be finally settled, you are hereby authorized and directed, under the sections of the statutes providing therefor, to cause the removal without delay of all such persons, reported by the Cherokee authorities as intruders, who do not, upon an investigation by the United States Indian agent, present prima facie evidence that they are entitled to citizenship in the nation, either by adoption, by virtue of Cheroke blood, or under the ninth article of the treaty of 1866, or otherwise by law; and all cases coming within the three classes named will be reserved for future action in the manner suggested in your letter of December 8, 1876, addressed to Charles Thompson, principal chief of the Cherokee Nation." (A copy of letter to Chief Thompson referred to accompanied report to Department, February 6, 1877.)

Agent Marston was, by letter of May 3, 1877 (copy with report, April 4, 1879, on the subject), accordingly directed to call upon the Cherokee authorities to furnish him with lists of all persons alleged to be intruders; upon receipt of those lists to notify the parties to appear before him to show cause why they should not be removed: and to remove all those failing to make prima facie evidence of their right to remain.

Pending this action the principal chief of the Cherokee Nation, under date of February 28, 1877, filed in this office an argument setting forth the ground on which the Cherokee authorities claim exclusive jurisdiction of all questions of citizenship, and declining to call the attention of the council to the action advised in letter of December 8, 1876, and by a letter of September 18, 1878, he transmitted for the information of this office a copy of an act of the Cherokee council of December 5, 1877, to establish a "commission on citizenship," in which the proposition made by this office in the said letter of December 8, 1876, was ignored, and the said commission was declared a *tribunal of last resort*.

In 1879 a proposition was made to the Cherokee delegates for the establishment of a joint commission of four persons, two to be appointed by the Secretary of the Interior, and two by the proper Cherokee authorities, which should act upon the applications of all persons claiming citizenship in the Cherokee Nation who were held by the authorities of that nation to be intruders therein. The unanimous decision of said commission to be final for or against any party, and the United States to remove all in whose case an adverse decision should be made, after reasonable notice, the party so removing to be allowed to sell his improvements at public or private sale, and to remove his personal effects.

In all cases where the commission should be divided in opinion it was proposed to have the testimony and the opinions of the commissioners certified to this office, to await an arrangement for their final disposition.

It does not appear that these suggestions were ever acted upon by the Cherokee authorities.

Upon a request of this Department of April 21, 1879, the Attorney-General rendered an opinion, December 12, 1879 (16 Opinions, 404) upon the question as to "whether in carrying out in good faith the provisions of the executory treaties named the United States are bound to regard simply the Cherokee law and its construction by the council of the nation, and answer the call of the officers of that nation for the removal of all persons whom they may pronounce intruders; or, on the contrary, whether, being called on to effect the forcible removal of such alleged intruders, the facts upon which the allegation rests may not with propriety, both by virtue of superior and paramount jurisdiction and in obedience to national obligation, be inquired into and determined by our national tribunals."

In this opinion the Attorney-General said, in reply to the inquiry above quoted, "that it is quite plain that in executing such treaties the United States are not bound to regard simply the Cherokee law and its construction by the council of the Nation, but that any Department required to remove alleged intruders must determine for itself under the general law of the land the existence and extent of the exigency upon which such requisition is founded."

W. P. Adair, assistant chief and Cherokee delegate, and W. A. Phillips, special agent of the Cherokee Nation, in a letter of July 8, 1880, applied to this Department for the removal of all persons residing in that nation without authority of law, "and not claiming Cherokee citizenship," from within the limits of the said nation.

With a view to complying with this request, and in the light of the opinion of the Attorney-General above quoted, the Union Indian agent, J. Q. Tufts, was by letter of July 20, 1880, given similar directions to those given Agent Marston, May 3, 1877, in regard to such cases as might be presented to him by the Cherokee authorities for removal, wherein the parties claimed citizenship, and produced prima facie evidence of their right thereto.

By authority of this letter and of another of November 8, 1881, in which these instructions were substantially repeated, Agent Tufts instituted the practice of issuing certificates to all claimants to citizenship in the Cherokee Nation who could prove a prima facie just claim.

In December, 1885, the Cherokee council adopted an act "to create a joint commission on citizenship to try and settle the claims to Cherokee citizenship," which authorized the appointment of two persons by the principal chief of the Cherokee Nation and one by the Secretary of the Interior, who were to constitute the said joint commission.

This act was, by a letter of February 1, 1886, from Principal Chief Bushyhead, submitted for the consideration and opinion of the Department, he having withheld his approval of the same for the purpose of having it approved by the Department before indorsing it; but, pending its consideration by this office, the Supreme Court of the United States rendered a decision in the "Eastern Band of Cherokee Indians against the United States and the Cherokee Nation" (117 U. S. 288), in which it was held that "if Indians in that State (North Carolina), or in any other State east of the Mississippi wish to enjoy the benefits of the common property of the Cherokee Nation, in whatever form it may exist, they must, as held by the Court of Claims, comply with the constitution and laws of the Cherokee Nation and be readmitted to citizenship as there provided."

It appears that after the decision of the Supreme Court in the case above referred to was rendered, Chief Bushyhead concluded not to approve the act providing for a joint commission, but, under date of April 3, 1886, addressed a letter to the Department requesting, among other things, that the right of the Cherokee Nation, under her constitution and laws, to determine who are and who are not citizens of the said nation, be recognized, and that an order be issued revoking the instructions contained in letters of July 20, 1880, and November 8, 1881, to Agent Tufts, and forbidding the issuance of prima facie certificates thereafter.

In a report of June 22, 1886, from this office it was stated that the request of Messrs. Bushyhead and Phillips that an order be issued revoking the letters of July 20, 1880, and November 8, 1881, and forbidding the issue of prima facie certificates I consider reasonable and just, having no retroactive effect. If you concur herein, instructions to that effect will be immediately issued to Agent Owen.

The Department, having given the subject preliminary consideration, this view of the question was concurred in, and, by a letter of August 5, 1886, this office was directed to take the proper action to carry it into effect, and to notify the agent to issue no further certificates of the character described after the receipt of such notification.

Under date of August 11, 1886, a copy of Department letter referred to was transmitted to Agent Owen with direction to take such steps, not involving the Government in any expense as would give publicity to the order of the Department, by which he would be governed in the matter.

A copy of the said letter was, by letter of same date, also transmitted to Principal Chief Bushyhead for his information.

The other matters referred to in Chief Bushyhead's letter of April 3, 1886, were deferred until a basis of settlement could be agreed upon, and pending their consideration an act was passed by the Cherokee council, which was approved by the principal chief December 8, 1886, constituting "a commission to try and determine applications for Cherokee citizenship."

The provisions of this act were exhaustively considered in a report of March 23, 1887, and while, so far as they might result in determining the status of any doubtful citizen of the Cherokee Nation, and the recognition of the rights of such as might be admitted to citizenship, no objection was raised thereto, this office declined to recommend that the adverse decision of the Commission should be treated as final by the Department to such extent as to require the removal of the party as an intruder, holding in such cases that the Department should require the submission of the testimony, so that if injustice should have been done in any case, the removal of the person unjustly denied citizenship could be refused; and that as the Cherokee Nation had seen fit to take the determination of citizenship claims into its own hands, it appeared to this office that no action on the part of the Department was necessary, except to advise the authorities of the Cherokee Nation that it will determine for itself whether or not any person should be removed as an intruder (16 Opinions Attorneys-General, 404), and that it would not permit anyone to be deprived of his improvements without a fair consideration therefor.

The Department, on March 25, 1887, approved the conclusions arrived at in the said report, and by letter of April 14, 1887, Agent Owen was instructed to advise Principal Chief Bushyhead thereof.

Since August 11, 1886, when the agent was directed to discontinue the issuance of prima facie certificates, persons claiming citizenship in the Cherokee Nation have been warned, whenever the opportunity was presented, that if they went into that nation and made improvements before their claims were investigated and allowed by the authorities thereof they would do so at their own risk, but where a party had entered the said nation in good faith, believing that he had rights there by blood, prior to that date, and was provided with a prima facie certificate, this office took a firm stand against his removal until some plan was adopted by which the Department should determine for itself whether he was an intruder or not, and until he had been paid a fair valuation for his improvements.

In this shape the matter stood, no plan having been agreed upon between the Government and the Indian authorities by which the status of these parties could be satisfactorily determined, until the Department, by letter of August 21, 1888, decided that it would accept the decision of the Cherokees against this class of claimants, as fixing their status as intruders in that nation, to be dealt with in accordance with the provisions of article 27 of the treaty of 1866 (14 Stats., 806), but no jurisdiction over the person or property of such claimants was thereby conceded to be in the Cherokee Nation.

In the said letter, and referring to the case of Kesterson, the following occurs:

"He, however, must be dealt with as an intruder in the light of the facts in his case. * * * He is entitled to a *reasonable time and opportunity*, in view of all the circumstances of his long residence and labor there, to dispose of his property or remove it, as may be most suitable to its character, and to gather his crops now growing. The proceeding of the Cherokee officer, besides being without jurisdiction, appears to have been unreasonably summary and severe.

"The right and duty of removing any citizen of the United States intruding on the Cherokees belongs to this Government, and, as has often been determined, the United States authorities must decide whether the exigency be such as to require that action. * * * The agent should be instructed that as this right of Kesterson to the disposition of his property is necessarily short-lived, limited, and tenuous, so it should be more perfectly considered and protected, and every circumstance turned rather to make it efficacious and valuable than to weaken or impair it. Kesterson ought to have approximately the full, fair value of his property, and the cessation of his status in the Territory ought not to be made a means of depriving him of any of his property or of its value, except in so far as is unavoidable with fair consideration. The time necessary to this may vary with circumstances. If attempt be made to take unfair advantage, the time should be extended. It appears to the Department that it should not be limited to less than six months in any case."

By a letter of August 24, 1888 (copy herewith), Agent Owen was furnished with a copy of Department letter and fully instructed as therein directed. He was also advised that those instructions would apply with equal force in all cases then pending, or that may thereafter arise, involving the same questions.

It appears from correspondence subsequently had with Agent Owen that, under authority of office letter, and the said letter of the Department, he notified all parties, in whose cases the same questions that were raised in the Kesterson case appeared to be involved, to dispose of their improvements and remove from the Cherokee Nation within six months from the date of his notification. The time was fixed at six months because, as stated by Agent Owen, of the large number of alleged intruders of that class (some eight hundred), and of the necessity of fixing some definite time. He stated that his order fixing the time was left open to extension if found necessary in any particular case.

Many who were so notified it seems have made ineffectual efforts to sell their improvements, and have failed because purchasers, who must be citizens of the Cherokee Nation, will offer no terms that can be accepted, thinking that by waiting until the time limited has expired they can buy the same for much less than their value.

Others, who were complained of by the Cherokee authorities and notified to sell their property and remove from the nation, appear to have been regularly admitted to citizenship by the Supreme Court under lawful authority and subsequently declared to be noncitizens by the Cherokee council or by a commission established by that council. These cases are now held pending an investigation which was directed by the Department in letter of March 2, 1889, relative to the Watts case.

It will be observed from the foregoing that the Government has always been ready and willing to carry out in good faith its part of the treaties with the Cherokees, and that it has repeatedly endeavored, without success, to secure the the coöperation of the Cherokee authorities in determining the status of alleged intruders, notwithstanding it has the right to determine for itself under the general law of the land the existence and extent of the exigency upon which the demand for their removal is founded.

It does not become the Cherokees to complain of the presence of these people in their country, and to intimate that there exists a disposition on the part of the United States to violate the obligations of its treaties with them in dealing with said people, when the records of this office show, and the fact is, that although the Government, not being bound to regard simply the Cherokee law and its construction by the council of that nation, has the right to determine for itself who are and who are not intruders in that nation under the general law of the land, in its desire to comply with the wish of the Cherokee authorities, and to settle the matter in a manner satisfactory to all parties, doing equal justice to all, has time and again proposed plans by which the said authorities would have an equal voice in the adjustment of the trouble, all of which have been either declined or ignored by that nation. And when this Department, in order to satisfy the demands of the Cherokee authorities, and in order to reach a settlement of the question, in the Kesterson letter, waived for the time its right to determine the status of alleged intruders in that nation, and agree to accept the adverse decision of those authorities in cases of parties claiming citizenship in the Cherokee Nation as fixing the status of such parties as intruders therein, to be dealt with in accordance with the provisions of the twenty-seventh article of the treaty of 1866, upon the simple and just condition that those rejected claimants who, upon the invitation of the authorities thereof, had entered the Cherokee Nation in good faith, believing that they had rights there by blood prior to August 11, 1886, should be allowed a reasonable time and opportunity, in view of all the circumstances of each case, to "dispose of their property or remove it, as might be most suitable to its character," the Cherokee people, instead of meeting this concession in the spirit in which it was made and rendering the Department every assistance they could, appear rather to have regarded it as a right, and to have exhibited a disposition to take advantage of the unfortunate position of these rejected claimants whose circumstances would force them to dispose of their improvements for much less than a fair consideration.

It does not appear that the Cherokee authorities have taken any action with a view to aiding the said rejected claimants to dispose of their improvements at a fair valuation, but it does appear on the other hand that some who have been notified to sell and prepare to move from the nation, by a fixed time, have made honest efforts to comply therewith, and have failed, because the Cherokees, believing that they would be removed at the expiration of the time fixed at any event, would not make an offer that would be accepted as a fair price therefor.

The attention of this office having been called to the difficulties met with by those who were endeavoring to comply with the requirements of the Department in regard to the disposition of their property in the Cherokee Nation, with a view to their removal therefrom, by a number of applications for the extension of the time allowed them in the notice given by Agent Owen, a report of March 8, 1889, based on the facts presented in a brief of February 16, 1889, by Jones and Voorhees, in the case of the Ellicott family, was submitted to the Department, in which, taking the ground that, as, in addition to the fact that the Cherokee authorities invited these people to come among and remain with them, the agent in charge under instructions from this Department, issued certificates to all persons who could show a prima facie right to Cherokee citizenship; and that as under the invitation of the Cherokees and these certificates, the parties complained of have continued for many years to improve their places, the United States Government as well as the Cherokees, is responsible for the improvements made by them, a change of the policy of the Department in dealing with these cases was recommended.

Replying thereto, under date of March 25, 1889, you conclude as follows:

"Before any action is taken by the Department, the proper agent should be called upon for a report of the facts in the case, and until that report is received and considered, he should be instructed to take no further steps for the removal of the Elliott family from the Cherokee country, until he is otherwise instructed in the matter; but in the mean time the crops may be planted and they must be paid for their labor and cost, or be allowed to remain to reap and carry away—even in case of adverse decision—if any such is ever made."

Under date of March 11, 1889, Agent Owen was telegraphed:

"Reported here that Jacob Ryan, W. M. Going and J. C. Going, claimants to Cherokee citizenship, were ordered to sell their improvements and remove by 1st instant. You will take no steps looking to the removal of these people, or any other claimants to citizenship in Cherokee Nation, until further orders from this office."

Since that date no further action has been taken by this office on the subject, for the reason that, the President having appointed Mr. Leo E. Bennett, of Muskogee, Indian Territory, to succeed Agent Owen, it was deemed advisable to suspend action in the matter until Mr. Bennett should have qualified and taken control of the agency.

It will be seen from the foregoing that the responsibility for the state of affairs heretofore and now existing in the Cherokee Nation with reference to this class of residents therein, rests not with the United States Government, but with the Cherokee authorities themselves, who have by various acts of council (joint resolution December 10, 1869, and act of November 20, 1870, copy of each herewith; acts of December 3, 1880, compiled laws, Cherokee Nation, 1881, p. 324; of December 16, 1881, pamphlet laws, Cherokee Nation 1881, '82, and '83, p. 29; all of which were repealed by act of December 8, 1886, pamphlet laws Cherokee Nation 1884–'85 and '86, p. 57), not only acknowledged the treaty right of the Eastern Cherokees to participate in the benefits of the common property of that nation, but invited them to emigrate West and become identified as citizens of the Cherokee Nation, and have denied citizenship to these parties who appear to have accepted the invitations offered and entered the nation in good faith, believing they had rights there by blood, and who have always had it in their power, by coöperation with this Department, to determine the question of the intrusion of these claimants, and to secure the removal of all actual intruders from the nation, but who have uniformly and persistently declined to accept any plan for the settlement of the matter, which would not give the said authorities complete control of the question.

However, the Department has decided that it will accept the adverse decision of the Cherokee authorities against claimants to citizenship as fixing the status of those claimants as intruders in the nation, upon the condition that such of said claimants as entered therein in good faith, believing that they had rights there by blood prior to August 11, 1886, should have reasonable time and opportunity, in view of the circumstances of each case, to dispose of their property and remove. But the Cherokees as a nation appear to have made no effort to assist the Department in the matter by rendering such aid to these people as would enable them to secure a fair price for their improvements; and since it appears that the Cherokee people are disposed to rather turn every circumstance to weaken and impair the necessarily "short-lived, limited, and tenuous" opportunity offered these disputed citizens to dispose of their property than to strengthen it and make it efficacious and valuable, by exercising a humane spirit, and paying these people a fair price for their improvements, which have added thousands of dollars to the nation's wealth, there does not exist, in my opinion, any obligation on the part of the Department to take the summary action demanded by the Cherokee authorities.

Indeed such action, apart from the fact that it would work great hardship upon a class of people who are guilty of no offense, except possibly to have been mistaken as to their rights in the Cherokee Nation, would, in the light of the position taken by this Department in the recognition of their prima facie rights to citizenship and in protecting them in making improvements in that nation, be unjust, and such a violation of the constitutional rights of United States citizens as should not be aided or permitted by the Government.

While there are probably many intruders in the Cherokee Nation who should be removed, I do not see how the Department can, in view of existing facts, consistently remove the rejected claimants of the classes referred to, until it is shown that they have been paid a fair compensation for their improvements, and as it appears that many, if not all, of them entered the Cherokee Nation upon the invitation of that nation, and made these improvements with the full knowledge and, some of them, under the advice of the Cherokee authorities, I am, as stated in my report of March 8, 1889, of the opinion that before the demand of those authorities for their immediate removal is complied with, the Cherokee Nation should be required to make some arrangements by which they will receive a fair compensation for their said improvements.

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Very respectfully, your obedient servant,

T. J. MORGAN,
*Commissioner.*

His Excellency, BENJ. HARRISON,
*President of the United States of America, Washington, D. C.*

SIR: We, the undersigned citizens of the United States of America, and lawful sojourners in the Indian Territory, do most respectfully beg leave to call your attention to the following anomalous condition of affairs in the Cherokee Outlet:

(1) There is a large portion of white Cherokees, both by blood and by marriage, by allegiance and by adoption, who, since the treaty of sale was made by the Government Commissioners, have entered upon said lands, built cabins or houses, and are making or preparing to make other improvements in order to acquire title to said lands.

And further, that the aforesaid persons now reside and have long continuously resided in the Cherokee Nation, where many of them are exclusive property-holders, and that said persons have never claimed individual property in said Outlet until since the negotiations for its sale were completed, and that now they are setting up the extraordinary claim of title to 80 acres for each man, woman, and child as an alleged consideration of the said treaty of sale.

And furthermore, that the aforesaid persons have in the above-described manner taken, or assumed to take, possession of large bodies of the most valuable lands in the Outlet.

(2) That the few so-called Cherokees who had previously pretended to make settlement in the Cherokee Outlet are since treaty of sale was made selling for valuable consideration large bodies of choice lands to other Indians and white men with Indian head-rights now entering upon said land.

(3) Furthermore, there are large numbers of white men so called, who have likewise entered upon the lands of the Outlet, staked out choice claims, erected houses or laid foundations, and posted the lands they staked with warning notices forbidding on peril any other United States citizen to enter upon or file on said lands after they shall have been duly opened to settlement.

And furthermore, that said persons are almost universally settlers and homesteaders of Oklahoma and adjacent territory, and who have sold or traded their homesteads, or having forfeited their homestead right are attempting to occupy said lands by force and fraud for speculative purposes.

And furthermore, we, in common with all other American citizens with honest and law-abiding intentions, would most earnestly enter our solemn protest against the passage of any bill containing the provisions of the one introduced in the present Congress by Delegate Harvey, of Oklahoma, to wit, allowing persons who have violated the existing homestead law, and thereby forfeited their right to acquire title to a homestead of the public lands by unlawfully entering upon said lands previous to the lawful time of entering thereon, being permitted to acquire a homestead right upon an equality with law-abiding homesteaders.

And furthermore, we protest against changing the number of school sections from 36 to 35 in favor of lawless persons who may be already occupying sections numbered 36.

All of which is to the great detriment of the prospective opening to settlement and peaceful and lawful occupation of said lands by honest and law-abiding American citizens.

We therefore avail ourselves of this method of placing before your excellency the facts as above stated; the evidences of which we can abundantly furnish if desired. And furthermore, we pray you to take such steps as in your judgment will most effectually put an end to this wholesale disregard for law and justice, and prevent this lawless terrorizing of honest citizens from preparing to enter upon said lands when they shall be declared duly open to settlement, either by publicly declaring the policy intended to be pursued by the Government or otherwise, as your judgment may dictate.

J. M. BERRY.
SAMUEL ASHLEY.
R. L. WIGGS.
F. M. BREEDING.
GEO. HAMLIN.
DAVID STEPHENS.
JOHN A. MILLS.

Tulsa, Ind. Ter.

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